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GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Office of Zoning  
Board of Zoning Adjustment

PUBLIC HEARING OF THE BOARD OF ZONING ADJUSTMENT

9:57 a.m. to 3:09 p.m.

Tuesday, January 12, 2016

441 4th Street, N.W.

Jerrily R. Kress Memorial Room

Second Floor Hearing Room, Suite 220-South

Washington, D.C. 20001

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1 Board Members:

2 MARNIQUE Y. HEATH, Chairperson

3 PETER MAY, Board Member

4 MARCEL ACOSTA, Board Member

5 CLIFFORD MOY, BZA Secretary

6

7 Office of Attorney General:

8 SHERRY GLAZER, Esq.

9

10 Office of Planning:

11 STEPHEN MORDFIN

12 MAXINE BROWN-ROBERTS

13 MATT JESICK

14 MEGAN RAPPOLT

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1 P R O C E E D I N G S

2 CHAIRPERSON HEATH: The hearing will please come to  
3 order. Good morning, ladies and gentlemen, we're located in  
4 the Jerrily R. Kress Memorial Hearing Room at 441 4th Street  
5 Northwest. Today's date is January 12th, 2016, and we're here  
6 for the public meeting and hearings of the Board of Zoning  
7 Adjustment of the District of Columbia.

8 My name is Marnique Heath, Chairperson. Joining me  
9 today is Fred Hill, Vice Chairperson, Jeffrey Hinkle, Board  
10 Member, and Peter May, Member of the Zoning Commission sitting  
11 in as Member of the Board today.

12 Please be advised that this proceeding is being  
13 recorded by a court reporter and is also being webcast live.  
14 Accordingly, we must ask that you refrain from any disruptive  
15 noises or actions while in the hearing room. The Board's  
16 procedures and how we will process applications can be found at  
17 the table by the back door.

18 All individuals wishing to testify today will need to  
19 do two things. The first is, prior to testifying, each person  
20 who wants to address the Board must complete two witness cards  
21 per person, and give those cards to the court reporter who is  
22 seated to my right prior to testifying.

23 The second thing you'll need to do is now stand and  
24 take the oath, which will be administered by Mr. Moy, the  
25 Secretary of the Board.

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1 MR. MOY: Good morning.

2 [Oath administered to the participants.]

3 MR. MOY: Ladies and gentlemen, you may consider  
4 yourselves under oath.

5 CHAIRPERSON HEATH: Okay. Good morning, Mr. Moy. Do  
6 we have any matters coming before the Board today, any  
7 preliminary matters?

8 MR. MOY: Yes, good morning, Madam Chair, Members of  
9 the Board. Happy New Year. It's 2016. The first hearing of  
10 this new year.

11 Two cases I want to announce for the record that is  
12 not on the docket today, Applications No. 1947 of Rom-Rymer.  
13 It has been postponed and rescheduled to January 26th, 2016, as  
14 well as Application No. 19153 of Independence Avenue  
15 Investments, has been postponed, rescheduled to February 23rd,  
16 2016. Finally, Madam Chair, Application No. 19181 of D.C.  
17 General Services, this is the application on Broad Branch Road.  
18 The staff has had contact with the project manager and the  
19 desire that we don't have a written document as yet, but the  
20 desire is to postpone and reschedule a future date, so I'll  
21 leave that to the Board for a decision.

22 CHAIRPERSON HEATH: Okay. I think we --

23 MR. MOY: And if the Board is willing to grant that  
24 the staff is recommending that we reschedule to February the  
25 23rd.

1 CHAIRPERSON HEATH: Okay. Does the board have any  
2 issues with -- Mr. Moy, can you repeat the application number?

3 MR. MOY: Yes. Application No. 19181, and I think I  
4 have neglected to mention that they had not posted --

5 CHAIRPERSON HEATH: Okay. All right.

6 MR. MOY: -- on the property.

7 CHAIRPERSON HEATH: I think given their desire to  
8 postpone and the fact that they haven't posted, we likely  
9 wouldn't go forward with this application today anyway, so I  
10 would recommend if the Board sees fit, to grant the  
11 postponement. Okay.

12 MR. MOY: Thank you, Madam Chair.

13 CHAIRPERSON HEATH: All right. Is that it for your  
14 preliminary matters?

15 MR. MOY: Yes.

16 CHAIRPERSON HEATH: Okay. Thank you. All right. So  
17 before we get started with our decision cases I'd like to call  
18 the parties for two cases to the stand. The first would be  
19 Application No. 19112. That's application of 307 Taylor Street  
20 Northwest. Are the parties for that application here?

21 Both the applicant and we understand there's been a  
22 request for party status.

23 MR. KADLECEK: Good morning.

24 CHAIRPERSON HEATH: Good morning. Just --

25 MR. KADLECEK: Cary Kadlecek on behalf of the

1 applicant. One of the party status applicants has withdrawn  
2 their party status request.

3 CHAIRPERSON HEATH: Okay.

4 MR. KADLECEK: The other one, we haven't heard from  
5 them. We don't know what their status is, however that party  
6 status request was filed before we'd revised our plans.

7 CHAIRPERSON HEATH: Okay.

8 MR. KADLECEK: So it's our belief that they are no  
9 longer a party in opposition, although we don't see them here.

10 CHAIRPERSON HEATH: Right. Okay. So I assume -- can  
11 you introduce yourself? Make sure your microphone is on.

12 MR. CRISCI: My name is Mike Crisci, I'm one of the  
13 co-owners of the building.

14 CHAIRPERSON HEATH: Okay. All right. So it appears  
15 that that party is not here. Okay. All right, so --

16 MR. KADLECEK: That's our understanding, yes.

17 CHAIRPERSON HEATH: -- then we're led to assume that  
18 they are not going forward with their party status request  
19 then. Okay. All right. Then we're not going to hear your  
20 case at this time. We'll call you back later on today.

21 MR. KADLECEK: Okay.

22 CHAIRPERSON HEATH: And I'll let you know shortly  
23 what that order will be.

24 MR. KADLECEK: Thank you.

25 CHAIRPERSON HEATH: Thanks. All right. The next

1 parties I'd like to call to the table would be those for  
2 Application 19154. That's the application of District Design  
3 and Development Argonne, LLC.

4 Good morning. Would you please introduce yourselves?

5 MR. SULLIVAN: Good morning, Madam Chair, Members of  
6 the Board. My name is Marty Sullivan with the law firm of  
7 Sullivan and Barros on behalf of the applicant.

8 MR. GAMBRELL: And I'm Alan Gambrell. I'm one of 15  
9 concerned citizens of Argonne Place.

10 CHAIRPERSON HEATH: Okay.

11 MS. BRUNO: My name is Ana Bruno. I'm also one of  
12 the concerned citizens of Argonne Place.

13 CHAIRPERSON HEATH: Okay. And you have requested  
14 party status?

15 MR. GAMBRELL: Yes.

16 CHAIRPERSON HEATH: Okay. And you would be  
17 representing the party?

18 MR. GAMBRELL: Yes, both --

19 CHAIRPERSON HEATH: Okay.

20 MR. GAMBRELL: Both of us would, yes.

21 CHAIRPERSON HEATH: Okay. What I'd like to encourage  
22 you to do, we've got quite a docket before us today, and so  
23 what I like to encourage you to do is to spend that time  
24 continuing your discussions. I'm sure you've had lengthy  
25 discussions up to this point, but like to use the time that we



1 have today towards trying to come to some agreement. This is  
2 proven to work in the past and so I encourage you. You can go  
3 out in the hall or talk to the receptionist in the Zoning  
4 Office and see if there is a room available for you. But I  
5 strongly encourage you to continue your conversations today in  
6 order to come to some conclusion amongst yourselves so that we  
7 don't have to reach a conclusion which is obviously going to  
8 make somebody unhappy.

9           So if you could spend this time doing that we'd  
10 appreciate it. We'll call you back at the end of the day  
11 today.

12           MR. GAMBRELL: Oh, at the end of the day? So --

13           CHAIRPERSON HEATH: Right.

14           MR. GAMBRELL: Okay. Thank you.

15           CHAIRPERSON HEATH: All right. Hopefully won't be a  
16 long day, but we'll see. Thank you. Hopefully. We'll see.  
17 All right.

18           Let's see. I'm going to call one more before we get  
19 to -- I'm going to call one more case before we get to our  
20 decision cases. That is Case No. 19101. Are the parties for  
21 that application here? Just one.

22           MS. OLSON: Hi, good morning.

23           CHAIRPERSON HEATH: Good morning.

24           MS. OLSON: My name is Kate Olson with the law firm  
25 of Greenstein Delorme and Luchs, and we represent the

1 applicant.

2 CHAIRPERSON HEATH: Okay.

3 MS. OLSON: We're recently retained.

4 CHAIRPERSON HEATH: Okay. All right. That was our  
5 understanding as well. Very recently.

6 MS. OLSON: Yes, very recently.

7 CHAIRPERSON HEATH: So we understand that you've  
8 asked for a postponement --

9 MS. OLSON: Yes.

10 CHAIRPERSON HEATH: -- in order to clean up this file  
11 and continue discussions --

12 MS. OLSON: Indeed.

13 CHAIRPERSON HEATH: -- with the ANC. Okay. From the  
14 look of the application it looks like that's necessary.

15 MS. OLSON: Yes.

16 CHAIRPERSON HEATH: So we just wanted to call you up  
17 today to see if there was any opposition from anyone else,  
18 whether it be the ANC or others who oppose this case, to your  
19 postponement. It appears that there's not so one more  
20 opportunity, is there anybody else here on this case?

21 [No audible response.]

22 CHAIRPERSON HEATH: Okay. So then we'll grant your  
23 postponement.

24 MS. OLSON: Thank you.

25 CHAIRPERSON HEATH: And we need a new date for this.

1 MR. MOY: Yes, staff recommends February the 9th,  
2 Madam Chair.

3 CHAIRPERSON HEATH: Okay. Does that give you enough  
4 time to meet with the ANC? Do you know when their next meeting  
5 is?

6 MS. OLSON: I am not sure and I think that there was  
7 some -- possibly some issue with posting. So --

8 CHAIRPERSON HEATH: Okay. So we could push to March.

9 MS. OLSON: Would it be okay if we worked with the --

10 MR. MOY: Okay.

11 MS. OLSON: -- Office of Zoning for --

12 MR. MOY: Then, Madam Chair, then I would suggest  
13 then for February 23rd? Or do you want March? Because that's  
14 next. So it's either February 23rd, Madam Chair, or March the  
15 -- March the -- well, we can do either March 1st or March 8th.  
16 Any of those days.

17 CHAIRPERSON HEATH: March 1st.

18 MS. OLSON: March. I think March would give us a  
19 better opportunity.

20 CHAIRPERSON HEATH: Okay. Okay.

21 MR. MOY: March 8th? Let's go March 8th.

22 CHAIRPERSON HEATH: March 8th?

23 MS. OLSON: Great.

24 CHAIRPERSON HEATH: Okay.

25 MS. GLAZER: Madam Chair, did the Board want to

1 indicate anything regarding the finality of the continuances?  
2 There had been discussion about that.

3 CHAIRPERSON HEATH: So you know that this case has  
4 been continued a number of times.

5 MS. OLSON: Yes.

6 CHAIRPERSON HEATH: And we don't like to see cases  
7 continued as many times as this one has been, but we understand  
8 the circumstances around this now and the applicant has just  
9 retained you. And so we want to make sure, I think by giving  
10 March 8th as your date we're trying to help you make sure that  
11 when you come back to us in March that you have everything you  
12 need and we can hear this case at that time. So --

13 MS. OLSON: I understand. Thank you.

14 CHAIRPERSON HEATH: We're not going to be in a  
15 position to grant -- to continue granting continuances. So I  
16 just want to make that clear.

17 MS. OLSON: Understood.

18 CHAIRPERSON HEATH: Okay. Thank you.

19 MS. OLSON: Thank you.

20 CHAIRPERSON HEATH: All right. Thank you. Okay.  
21 Then we have a number of decision cases on the docket today and  
22 we will go through those next, then we have a foreign missions  
23 case which will be immediately following our decision cases.  
24 And then we will move into our hearing cases, and I'll go  
25 through that order once we complete our FM BZA case.

1           So, Mr. Moy, will call our first decision case?

2           MR. MOY: Yes, Madam Chair, with pleasure. The first  
3 case before the Board is an application that was submitted for  
4 expedited review on the expedited review calendar. And that is  
5 Application No. 19170 of Kevin O'Day. And this is property  
6 located on 1616 Webster Street Northwest, Square 2646, Lot 10,  
7 and of course it's special exception under Section 223.

8           CHAIRPERSON HEATH: Okay. Thank you. So this case  
9 appears pretty straight forward to me. The one thing that was  
10 missing is a report from the ANC. But based on the applicant's  
11 -- the information the applicant has submitted, this was  
12 presented at a recent ANC meeting and the ANC had no objection  
13 to this project. And so I have -- I am fine to go forward with  
14 this. And if -- is there anybody who has any opposition to  
15 proceeding with this?

16           Okay. Then I would move that we grant the special  
17 exception for Application No. 19170.

18           MR. HILL: I'll second.

19           CHAIRPERSON HEATH: The motion has been made and  
20 seconded. Any further discussion?

21           [Vote taken.]

22           CHAIRPERSON HEATH: Okay. The motion carries.

23           MR. MOY: Staff would record the vote as four to zero  
24 to one. This is on the motion of Chairperson Heath to approve  
25 the application for the relief requested. Second the motion is

1 Vice Chair Hill. Also in support, Mr. Peter May and Mr.  
2 Jeffrey Hinkle. We have a board seat vacant. Motion carries  
3 four to zero, Madam Chair.

4 CHAIRPERSON HEATH: Summary.

5 MR. MOY: Thank you.

6 CHAIRPERSON HEATH: Our next case when you're ready,  
7 Mr. Moy.

8 MR. MOY: The next case for a decision would be  
9 Application No. 19004 of 1933 Montana Avenue, LLC. As you know  
10 this is a request for a special exceptions, from the number of  
11 parking spaces under 2108.2, accessory parking space location  
12 under 2116.7, and the parking space accessibility requirements  
13 under 2117.4 in the R-4 district at 16 -- at the corner,  
14 Southeast corner of 16th Street Northeast, and Oates Street  
15 Northeast, Square 4073, Lots 52 and 803.

16 As you recall, the Board last heard this on December  
17 15th and closed the record with a request for supplemental  
18 information, additional information that was filed in your case  
19 folders under Exhibit 39, Madam Chair.

20 CHAIRPERSON HEATH: Okay. Thank you, Mr. Moy. This  
21 application has gone through a number of revisions prior to the  
22 December 15th hearing date. And at that time it was brought --  
23 it was made clear that OP now stands in support of this  
24 application based on the revisions. They had asked for revised  
25 landscape plan, and the applicant has since submitted that.

1           We don't have anything new from the Office of  
2 Planning but the applicant indicates that they've reviewed this  
3 landscape plan with the Office of Planning and that it meets  
4 their approval. It's a minor change to the landscaping plan,  
5 but we held this open in order for them to get that new plan  
6 in. So I think what the applicant did prior to the December  
7 15th hearing, along with the revised landscape plan, puts me in  
8 a position to support this. Anyone else? All right.

9           MR. HINKLE: No, Madam Chair. I agree and I  
10 appreciate the enhanced landscape plan.

11           CHAIRPERSON HEATH: Okay. Then I will move that we  
12 approve the special exceptions under Application No. 19004 for  
13 Montana Avenue.

14           MR. HILL: I'll second.

15           CHAIRPERSON HEATH: The motion has been made and  
16 seconded. Any further discussion?

17           [Vote taken.]

18           CHAIRPERSON HEATH: The motion carries.

19           MR. MOY: Yeah, before I go to the vote count, Madam  
20 Chair, I just want to -- I neglected to mention that this has  
21 been amended for relief under Section 214.

22           CHAIRPERSON HEATH: Correct. Yes.

23           MR. MOY: I'm reminded by the staff.

24           CHAIRPERSON HEATH: Thank you.

25           MR. MOY: So that would be a final vote of four to

1 zero to one on your motion, Madam Chair. Seconding is Vice  
2 Chair Hill. Also in support, Mr. Peter May, Mr. Jeffrey  
3 Hinkle, board seat vacant. Motion carries.

4 CHAIRPERSON HEATH: Okay. Thank you. Summary.

5 MR. MOY: Yes. Thank you.

6 CHAIRPERSON HEATH: Our next --

7 MR. MOY: All right. Application No. 19133, this is  
8 of St. Thomas' Episcopal Parrish, and this is -- was reviewed  
9 for variance relief for lot occupancy under 532.1, at property  
10 1772 Church Street Northwest, Square 156, lot 369. The Board  
11 last heard this on December 15th, 2015, closed record, and I  
12 believe, let's see, asked for post-hearing documents. And that  
13 is in your case folders under Exhibit 149 and 151 and 152,  
14 which is the applicant's proposed order.

15 And finally, Madam Chair, there are additional  
16 filings made by the opposition, which is under Exhibits 147,  
17 148, and 150, for your review and acceptance into the record.

18 CHAIRPERSON HEATH: Okay. All right. So this is a  
19 case that had quite a lengthy hearing in the last month, and  
20 during that time we heard from the applicant as well as two  
21 parties who had requested party status, both in opposition. We  
22 also heard from quite a few witnesses, both in support and in  
23 opposition.

24 It appears that the primary concern of a lot of the  
25 parties in opposition is the -- is really with respect to the



1 large scale of the new church and residential building that's  
2 proposed to be built here. This is a case where a church was  
3 previously located on this property. Really since 1894, and  
4 the main church was lost to fire and after that time the church  
5 began to operate out of their parish house. And it continues  
6 to, to this day. But the church is determined that the current  
7 parish hall is not large enough to support the operations of  
8 the church at this time and so they're seeking to enlarge the  
9 church facility and to include residential as a part of  
10 supporting the financial obligations of building and operating  
11 this new church.

12           The requests that they've made is for really just 6.7  
13 percent additional lot occupancy, which is rather minor. And  
14 we've asked for, during the hearing, we asked for presentation  
15 of other options that the applicant had considered as a matter  
16 of right for constructing this church. And they presented some  
17 of those to us both during the hearing and subsequent as a part  
18 of their post-hearing submission. And, you know, the concerns  
19 that the opposition parties had really wouldn't be addressed by  
20 -- at least the strongest concerns that we heard, really,  
21 wouldn't be addressed by not granting this request because the  
22 matter of right building that could be constructed here as a  
23 church still is of about the same size and scale.

24           As I said, what they're asking for is really just 6.7  
25 percent above the permitted lot occupancy. So to me the

1 request seems rather minor and I understand the reasons that  
2 they need this additional lot occupancy. I don't know if any  
3 other board members have anything else that they'd want to say,  
4 but I'm tending to support this request.

5 MR. HILL: Madam Chair, I was actually a little torn.  
6 I was kind of interested in hearing what everybody else had to  
7 say. I mean, this went on for a long time with us, and there  
8 were a lot of people that were on both sides. And I, as  
9 someone who knows that neighborhood and knows the park and that  
10 the park wasn't -- you know, is private property anyway. And  
11 so I could understand why I wouldn't want something this large  
12 at the end of that block. You know, it's -- however, I guess,  
13 you know, I was kind of again thinking that the -- I thought  
14 that the applicant did make their case for the confluence of  
15 factors in terms of getting the additional 6.7 percent. But at  
16 the same time I was also thinking that, you know, I think they  
17 can do it without the 6.7 percent. Like, you know, they'll  
18 have to do a different design.

19 Now whether that means the neighborhood will be happy  
20 or not, that's the part that I struggled with. You know, I  
21 mean, they're still going to have the same massing, they're  
22 still going to have the same large structure at the end there.  
23 And so I kind of -- and again, also just to for the record  
24 kind of state that, you know, I didn't necessarily -- you know,  
25 I think that the church is trying to -- and hopefully they'll

1 do, you know, a lot with the funds that will benefit the  
2 community. But they're just maximizing the space. You know, I  
3 mean, if there was like -- if they wanted to rebuild the church  
4 the way it was before the fire, you know, I don't know if they  
5 have the money to be able to do that, but I'm sure there  
6 wouldn't be any problem with the neighborhood.

7 So I was kind of like, that's where I was kind of  
8 looking to the rest of the Board. However, just to see what  
9 other people had to say. But I -- so that's where I was.

10 MR. MAY: Madam Chair, I was not particularly torn in  
11 this circumstance. I certainly can appreciate the concerns  
12 that were expressed by the neighbors regarding the height and  
13 bulk of the building because it is different from much of the  
14 block. However, it is consistent with the zone, and it's  
15 within the regulation height, FAR, and parking. So I mean,  
16 they meet most of the requirements.

17 The only real issue is that the way this design  
18 evolved, in going through Historic Preservation, essentially  
19 wound up with -- they wound up in a situation with needing a  
20 little more lot occupancy. I don't really have a big problem  
21 in granting this relief. I cannot see where the parties in  
22 opposition have actually explained how their objections relate  
23 to the requested relief. We have a lot of people who are  
24 objecting to the loss of park and to the height of the  
25 building. But you know, I almost -- I can find almost nothing

1 that actually specifically relates to lot occupancy, which is  
2 where the relief is requested.

3 And in fact, I think the building is better off with  
4 a little more lot occupancy because it allows for the setbacks.

5 If they were to actually meet the lot occupancy it wouldn't  
6 look any different from the street. So I'm also frankly a  
7 little bit disappointed. I mean, we often hear from neighbors  
8 of projects who are unhappy with changes in the status quo.  
9 But I saw precious little appreciation from the neighbors for  
10 the 45 years that they had for this public park.

11 And I would hope that we would have seen more of  
12 that. I mean, there was a little bit of it, but most of it was  
13 -- we appreciate the fact that there was a park, but you know,  
14 the real thing to do is bad for the following reasons. That  
15 kind of qualified appreciation is pretty faint to me. So, as I  
16 said, disappointing and I have no problem strictly on the basis  
17 of zoning to grant the relief.

18 MR. HINKLE: Yeah. Thank you, Madam Chair. I  
19 certainly appreciate the passion of the people that were  
20 opposed to this project. And I, in fact, for about a third of  
21 my life have lived a couple blocks away from this site and have  
22 used the park often. And I certainly understand some of the  
23 people's concerns about losing the green space because it  
24 really is a little bit rare in this neighborhood.

25 And I actually did spend time reading the many

1 letters that were submitted, and I'm in agreement with  
2 Commissioner May there. I was looking for, as he was,  
3 something that related to the lot occupancy in terms of the  
4 opposition and I really wasn't able to find that. But I do  
5 think there was a pretty long and clear public process that  
6 actually, you know, had this project evolve into something that  
7 was better than originally designed. And so I want to say that  
8 I appreciate the work that the applicant actually made in  
9 working through that process because I think there is a good  
10 project at the site.

11           You know, in terms of lot occupancy, you know, you  
12 have the parish hall, you have the program of the church, and  
13 you have all the requirements for a residential building that  
14 has to go on that lot, and I think the applicant showed, you  
15 know, some of the difficulties in putting that on. And you  
16 know, in looking at the site I don't know, you certainly  
17 wouldn't gain anything for pushing the building away from the  
18 alley line. I think that would just be wasted space on the  
19 ground. Pushing the building up, you know, towards the lot  
20 line on Church Street and 18th Street, I think makes sense. It  
21 kind of continues the historic character of the neighbor in my  
22 opinion.

23           So I'm completely in support to this as well. I  
24 think there is an interesting design to the church that adds to  
25 the character of the neighborhood. The diversity and

1 architecture there is something that really attracted me. So I  
2 think it's a good project and I think the applicant has made  
3 the case for the lot occupancy relief.

4 CHAIRPERSON HEATH: Okay. Any further discussion?

5 MR. HILL: No, as I said, I was interested in hearing  
6 what everyone had to say and so, you know, I'd also be in  
7 support of the variance.

8 CHAIRPERSON HEATH: Okay. Then if there's no further  
9 discussion I will make a motion that we approve the request for  
10 the variance request under 532.1 for lot occupancy for  
11 Application No. 19133.

12 MR. HILL: I'll second.

13 CHAIRPERSON HEATH: The motion has been made and  
14 seconded. Any further discussion?

15 [Vote taken.]

16 CHAIRPERSON HEATH: The motion carries.

17 MR. MOY: Staff would record the vote as four to zero  
18 to one. This is on the motion of Chairperson Heath. Seconding  
19 the motion, Mr. Hinkle. Also in support, Vice Chair Hill and  
20 Mr. Peter May for the relief requested so that would result in  
21 the vote would be four to zero to one. That would be a full  
22 order, Madam Chair.

23 CHAIRPERSON HEATH: Okay. Thank you. So our last  
24 decision case, Mr. Moy?

25 MR. MOY: That would be 19103 of TPC 5th and I

1 Partners, LLC. This is a request for variances from the rear  
2 yard, closed court, and minimum parking requirements, and the  
3 parking access requirements, and special exception from the  
4 roof structure requirements under 770.6, sub B and 411.3, I  
5 believe. And this is property located at 901 5th Street  
6 Northwest, Square 516, Lot 59.

7 CHAIRPERSON HEATH: Okay. Thank you, Mr. Moy. The  
8 Board previously heard this case on December 15th and at that  
9 time we voted to approve the variance relief being requested  
10 for this project with four conditions. When we decided to  
11 schedule deliberation and decision on the special exception  
12 relief, a later date which is now before us. So we -- during  
13 the applicant's presentation we asked them to reconsider the  
14 rooftop, the penthouse, as it was currently -- or as it was  
15 then designed, in order to reduce the significant setback  
16 relief that was being requested there.

17 We also asked them to go back to the ANC to have them  
18 specifically address the penthouse use as habitable space and  
19 to make sure that the ANC was in support of the use of the  
20 penthouse for the uses being proposed. Since that time the  
21 applicant has submitted new information, new plans to the  
22 record, and they have reduced the amount of setback relief.  
23 They really now just need setback relief because of the  
24 elevator core and its location, and they've presented why they  
25 can't shift the elevator core and the impacts that that has to

1 the rest of the building in order to eliminate the setbacks  
2 there.

3 They've also gone back to the ANC and indicated that  
4 the ANC is in support of the use of the penthouse for  
5 everything except a nightclub, based on the provisions for use  
6 within a penthouse. And the applicant has agreed that they  
7 will not pursue nightclub use for the penthouse.

8 And so based on the information, the new information  
9 the applicant has presented, I am in support of the requested  
10 relief, the special exception relief. Anyone else?

11 MR. MAY: Madam Chair, yes. I appreciate all the  
12 additional work that's occurred since our last meeting on this.  
13 They revised the design to modify the relief that's needed on  
14 the rooftop and I think that that was very positive. And of  
15 course consulting with the ANC and getting their okay on the  
16 restaurant use was imperative. And unfortunately also the  
17 order regarding the new penthouse regulations was published on  
18 Friday. Just in time. And so I am comfortable moving forward  
19 with the relief requested. So, that's it.

20 CHAIRPERSON HEATH: All right. Anyone else have  
21 anything they want to say?

22 Okay. Then I will -- I don't know if we need to  
23 rescind our previous vote, or if we can just amend that vote to  
24 approve the special exception.

25 MS. GLAZER: I think you can make a motion



1 acknowledging that you previously voted on the variance relief  
2 and now you're voting on the special exception.

3 CHAIRPERSON HEATH: Okay. All right. So then I will  
4 make a motion that we amend the previous vote to approve the  
5 variances, and now add to that that we approve the special  
6 exception request for Application No. 19103.

7 MR. MAY: Second.

8 CHAIRPERSON HEATH: The motion has been made and  
9 seconded. Any further discussion?

10 [Vote taken.]

11 CHAIRPERSON HEATH: The motion carries.

12 MR. MOY: Staff would record the vote as four to zero  
13 to one, this is on your motion, Madam Chair, for the relief  
14 requested, the variance, and the special exception relief.  
15 Seconding your motion is Mr. Peter May. Also in support, Vice  
16 Chair Hill and Mr. Jeffrey Hinkle. Board seat vacant. Motion  
17 carries four, zero, one, and this would have to be a full  
18 order, Madam Chair.

19 CHAIRPERSON HEATH: Okay. Thank you. All right. So  
20 we're going to have to play musical chairs a bit and we'll have  
21 -- right? Okay. Marcel Acosta join us for our FM BZA case  
22 which is coming before us next.

23 [Pause.]

24 CHAIRPERSON HEATH: All right. So before we call the  
25 next case, Mr. Moy, I'll go through some preliminary issues to

1 open the FM BZA hearing.

2 So this hearing will please come to order. Good  
3 morning, ladies and gentlemen, we're located in the Jerrily R.  
4 Kress Memorial Hearing Room at 441 4th Street Northwest. This  
5 is the January 12th, 2016 hearing of the Board of Zoning  
6 Adjustment of the District of Columbia, convening to act on a  
7 chancery application pursuant to the Foreign Missions Act and  
8 Chapter 10 of the Zoning Regulations.

9 My name is Marnique Heath, Chairperson. Joining me  
10 today is Vice Chairperson Fred Hill. The federal  
11 representatives are Marcel Acosta, representing the National  
12 Planning -- National Capitol Planning Commission, and Peter May  
13 representing the U.S. Park Service.

14 Copies of today's hearing agenda are available to you  
15 and are located in the wall bin near the entrance door. Please  
16 be advised that this proceeding is being recorded by a court  
17 reporter and is also being web cast live. Accordingly, we must  
18 ask you to still refrain from any disruptive noises or actions  
19 while in the hearing room.

20 When presenting information to the Board please turn  
21 on and speak into the microphone, first stating your name and  
22 then your home address. When you're finished speaking please  
23 turn your microphone off so that the microphone is no longer  
24 picking up sound or background noise.

25 All persons wishing to testify either in support or

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1 opposition are to fill out two witness cards. These cards are  
2 located on the table near the entrance door and on the witness  
3 tables. Upon coming forward to speak to the Board please give  
4 both cards to the court reporter seated at the table to my  
5 right.

6 The order of procedure for a Foreign Mission case is  
7 as follows; we'll first hear a statement from the witness -- a  
8 statement and witnesses of the applicant. We'll then hear  
9 government reports, including the U.S. State Secretary of State  
10 and the District of Columbia Office of Planning on behalf of  
11 the Mayor. We'll then hear reports or recommendations by other  
12 public agencies, then a report of the ANC, and then we'll hear  
13 from persons speaking in support or opposition.

14 Please note that request for party status in a  
15 chancery application are not applicable because this is a  
16 rulemaking proceeding.

17 Mr. Moy, are there any other matters before we call  
18 this?

19 MR. MOY: No, Madam Chair. I was just going to add  
20 that this case was originally heard on November 10th, 2015, and  
21 as you'll recall since then, the applicant has submitted  
22 revised plans and elevations under Exhibit 39, and as well as  
23 there is an Office of Planning supplemental under Exhibit 41.

24 CHAIRPERSON HEATH: Would the applicant and parties  
25 to this case please come forward?

1 All right. Again, if you would please introduce  
2 yourselves?

3 MR. KRUTIKOV: Yes. Hello. My name is Mikharl  
4 Krutikov. I am with the Embassy of Russia.

5 MR. PARFENOV: Arteru Parfenov of today the  
6 presentation of the Russian Federation.

7 MR. RICKS: Andre Ricks, Remington Construction.

8 CHAIRPERSON HEATH: Okay.

9 MS. EDSON: Cheryl Edson, Department of State.

10 CHAIRPERSON HEATH: Okay. So as Mr. Moy stated, you  
11 were previously before us on November 10th. Since then it  
12 appears that you've presented to -- or done additional work  
13 with HPO and presented to HPRB. Can you talk about the  
14 revisions that you've made as a result of your conversations  
15 with OP, HPO, and HPRB?

16 MR. KRUTIKOV: Yes. So after the meeting with the  
17 Historic Department and after the hearing with the Historic  
18 Committee, they asked us to create the design of the fence that  
19 would be less obstructive to the building. And the second  
20 thing was to try to move it from the existing fence, back.

21 We were able to come up with a design that is like,  
22 less obstructive. And the removal of the ornament designs.  
23 And but unfortunately we cannot move the fence back due to the  
24 -- and I submitted yesterday, the pictures of the property. On  
25 the back of the fence there are lighting and the security

1 cameras installed right now. And that's on one side.

2 And also on the side of the building, that's the only  
3 access to the back of the -- to the front of the building,  
4 actually. So we cannot move the fence from the existing  
5 balustrade structure.

6 CHAIRPERSON HEATH: All right. And so it was HPO who  
7 requested that you remove the ornamental detailing from the  
8 previous pickets as --

9 MR. KRUTIKOV: Correct.

10 CHAIRPERSON HEATH: Or the --

11 MR. KRUTIKOV: Yes.

12 CHAIRPERSON HEATH: -- fence design, as it was  
13 designed prior to coming up with this picket design.

14 MR. KRUTIKOV: Correct.

15 CHAIRPERSON HEATH: Okay. Did they also ask that you  
16 reduce the size?

17 MR. KRUTIKOV: No, it was -- the reduction of the  
18 size that they were asking to move us, the fence back, and by  
19 moving it back we would need to reduce the size. But I mean,  
20 just unfortunately we -- the Embassy cannot move it due to the  
21 obstruction and accessibility of the property if we would put  
22 the fence in the middle of the sidewalk. I mean, the side of  
23 the building.

24 MR. MAY: Can you explain that again?

25 MR. KRUTIKOV: On the side of the building it's 10

1 feet space between the existing balustrade and the building  
2 itself. So in order to move it on the side of the building  
3 then the fence should be right in the middle and if you can see  
4 the picture that I submitted, it is the side of the building.  
5 It will be right in the middle over there. So there is no  
6 possible way to get, in the future, lawn mowing equipment or  
7 any other equipment if we need to get it in the front of the  
8 building.

9 MR. MAY: So looking at this picture here you're  
10 saying that you can't put a fence down the middle of it?

11 MR. KRUTIKOV: We can put the fence, but then the  
12 front of the building will be inaccessible.

13 MR. MAY: To what? I mean, what can't get past that  
14 fence? I mean, you're talking about a line of a fence going  
15 right through there.

16 MR. KRUTIKOV: Yes. Right in the middle, so it  
17 will --

18 MR. MAY: What can't get past?

19 MR. KRUTIKOV: Let's say, you know, the tractors for  
20 the lawn mowing and so forth. So --

21 MR. MAY: How wide is this space?

22 MR. KRUTIKOV: It's 10 feet.

23 MR. MAY: And how far back does the fence need to be  
24 from the balustrade?

25 MR. KRUTIKOV: At least four feet.

1 MR. MAY: So --

2 MR. KRUTIKOV: For it not to consider. For the  
3 balustrade not to be considered as a step.

4 MR. MAY: Right. At least four feet.

5 CHAIRPERSON HEATH: Would you not have some sort of  
6 lockable gate or opening in that fence anyway?

7 MR. KRUTIKOV: No, just, we are not talking about in  
8 the matter of the gate we're lockable. We are talking about  
9 the space that we have left for the --

10 CHAIRPERSON HEATH: Right. But if you moved it back  
11 could you not have some sort of lockable -- so that you can --  
12 because you're saying that that would prevent you from --

13 MR. KRUTIKOV: So now the space is split to four and  
14 six feet. So I mean, we have the only access is a six feet,  
15 and you see that we have the four -- we have balconies as well  
16 on the side.

17 MR. MAY: So, but six feet is not wide enough to be  
18 able to get lawn mowing equipment?

19 MR. KRUTIKOV: I mean there are different lawn mowing  
20 equipment.

21 MR. MAY: Yes, there is.

22 MR. KRUTIKOV: So there are different types. I mean,  
23 that's not the only lawn mowing equipment that we are talking  
24 about. I mean, in the future fi we will ever need to do any  
25 kind of façade work or anything. So this is just -- this is

1 just for the side of the building. But the most important is  
2 actually the front, the façade of the building. And that's --  
3 there is an electrical and the surveillance cameras over there.

4 MR. MAY: I mean, it seems that everything that  
5 you're suggesting are obstacles that can be overcome. I mean,  
6 equipment can be moved. It may be -- there may be costs  
7 associated with that. But it's possible to move cameras. It's  
8 possible to move lighting. I'm not sure that the lighting  
9 actually has to be moved --

10 MR. KRUTIKOV: Uh-huh.

11 MR. MAY: -- because it could be on the outside of  
12 the fence. I know that makes it -- it may make it difficult to  
13 mow the lawn around it or something like that. But again,  
14 these are all challenges that can be overcome.

15 MR. KRUTIKOV: Uh-huh.

16 MR. MAY: And I mean, it's still not going to be very  
17 attractive having that fence four feet behind the balustrade.  
18 But it will be better than having the very high fence right up  
19 against it. I don't know.

20 MR. ACOSTA: Madam Chair.

21 CHAIRPERSON HEATH: Sure.

22 MR. ACOSTA: Madam Chair. Have you explored  
23 relocating the equipment and the lighting as part of this, and  
24 do you actually have a cost estimate of what --

25 MR. KRUTIKOV: No, we cannot explore this.



1           MR. ACOSTA:   Okay.   Are there other -- other than  
2   lighting and the cameras are there other equipment within the  
3   building yard that we should be aware of?

4           MR. KRUTIKOV:   That's not what I'm aware of, at least  
5   right now.

6           MR. ACOSTA:   So it's simply cameras and lighting on  
7   the front of the building?

8           MR. KRUTIKOV:   Correct.

9           MR. ACOSTA:   Okay.

10          MR. MAY:   Madam Chair, I'm not sure where we are in  
11   the proceeding on this.   I mean, it --

12          CHAIRPERSON HEATH:   Do you have another question?

13          MR. MAY:   I don't really have questions.   I have  
14   suggestions in how we move forward when it's appropriate.

15          CHAIRPERSON HEATH:   Okay.   All right.   Do you -- does  
16   the Board have any other questions for the applicant?   Okay.

17          MR. HILL:   I just had a quick question.   So for HPO  
18   to be in approval, right, so they just want you to do it four  
19   feet from the balustrade?

20          MR. KRUTIKOV:   Well, they're saying trying to move it  
21   from the balustrade.

22          MR. HILL:   And then there would be an approval?

23          MR. KRUTIKOV:   Potentially.

24          CHAIRPERSON HEATH:   With this new picket design.

25          MR. KRUTIKOV:   Correct.

1 CHAIRPERSON HEATH: The half inch by half inch.

2 MR. KRUTIKOV: Correct.

3 CHAIRPERSON HEATH: Okay. Okay. Let's -- if there's  
4 nothing else that the applicant wants to present at this time  
5 it seems the Board doesn't have any further questions, we will  
6 ask if the representative of Department of State has any  
7 further comments. I know you spoke at the last hearing. Is  
8 there anything else you'd like to add?

9 MS. EDSON: I don't have any further comments, but  
10 I'm happy to answer questions if you have any.

11 CHAIRPERSON HEATH: Okay. All right. Then I'd like  
12 to hear from Ms. Thomas from Office of Planning since you've  
13 been in the discussions working through this with the  
14 applicant.

15 MS. THOMAS: Yes. Good morning, Madam Chair, Members  
16 of the Board. Karen Thomas for the Office of Planning.

17 We did try to work with the applicant in coming up  
18 with some sort of compromised position, and what we submitted  
19 is what has been suggested by HP. What I could say is that if  
20 some attempt is made to push the fence back HP will take a look  
21 at it again with revised drawings and we could possibly come to  
22 some agreement, but I can't sit here and say that for sure.

23 CHAIRPERSON HEATH: Okay.

24 MS. THOMAS: So that might have to be the next move.

25 CHAIRPERSON HEATH: Okay. But in your conversations

1 so far is it -- would you think that moving the fence back the  
2 four feet that we've talked about would be something that HP  
3 could be in support of?

4 MS. THOMAS: I would think so in one sense because it  
5 would reduce, substantially, the visibility --

6 CHAIRPERSON HEATH: Uh-huh.

7 MS. THOMAS: The visibility from the -- given the  
8 height of the balustrade, it would reduce the visibility from  
9 California Street from any of the streets, so.

10 CHAIRPERSON HEATH: Okay. And this new design with  
11 the thinner pickets, is --

12 MS. THOMAS: It has been helpful.

13 CHAIRPERSON HEATH: Okay. All right.

14 MS. THOMAS: Uh-huh.

15 CHAIRPERSON HEATH: Okay. All right.

16 MS. THOMAS: But it, again, it remains the location.

17 CHAIRPERSON HEATH: Right. Okay. All right. The  
18 board have any questions of Office of Planning?

19 All right. Does the applicant have any questions of  
20 Office of Planning? Okay. All right. Thank you, Ms. Thomas.

21 All right. Then, Mr. May, did you have something  
22 else you wanted to add?

23 MR. MAY: No, I mean, if we're ready to start  
24 deliberating.

25 CHAIRPERSON HEATH: I think we're almost there. Let

1 me do a couple of other things. Do you, as the applicant, have  
2 anything else you'd like to add? We went through a full  
3 hearing on this at our last case. Okay. All right.

4 We still have no report from the ANC on this.

5 [Someone speaking off mic.]

6 CHAIRPERSON HEATH: Oh, you are. Okay. All right.

7 MR. GAMBRELL: Hi. Alan Gambrell, ANC 1C  
8 Commissioner. We took no position on the application.

9 CHAIRPERSON HEATH: Okay.

10 MR. GAMBRELL: Just thought I'd let you know.

11 CHAIRPERSON HEATH: All right. So you have been in  
12 discussions with the applicant on this?

13 MR. GAMBRELL: No. No, we just decided to take no  
14 position.

15 CHAIRPERSON HEATH: Oh, okay. All right.

16 Understood. Okay. Thank you.

17 All right, then if the applicant has nothing further  
18 we can start deliberation on this, if the Board is ready.

19 MR. MAY: So, Madam Chair, I mean, it seems to me  
20 that that we still don't quite have enough information to make  
21 a decision. I think it's helpful seeing -- you know, with the  
22 improvements that have been made to the fence, and also seeing  
23 the photographs and other information that was provided. But I  
24 don't feel like we have enough information to decide that, yes,  
25 it's not possible to agree with the applicant that it's not

1 possible to relocate the fence.

2           It may be difficult or it may be expensive. They  
3 haven't really made a strong case in that way. And I also  
4 think it's important for us to understand whether in fact the  
5 fence actually might be acceptable if it's set back four feet.

6 I mean, we don't really have any kind of images that might  
7 help us decide if that's possible.

8           So I would suggest that we ask the applicant to  
9 return with -- do some further consultation with the Office of  
10 Planning and return to us with some either stronger  
11 documentation of their position, or better yet, a version of  
12 this that moves the fence back four feet that is acceptable  
13 from their perspective. I mean, hopefully they can get to that  
14 point but that certainly would make it more feasible for us to  
15 move forward.

16           CHAIRPERSON HEATH: Okay. Does anybody else have  
17 anything else you'd like to request?

18           MR. HILL: Well, I mean, just as far as deliberations  
19 and I wouldn't feel comfortable approving this now in terms of  
20 like what I've heard from, you know, HP as well as, you know,  
21 that OP is not in support of this design. And seeing that, you  
22 know, the fence pushed back. I mean, as far as the argument is  
23 about a lawnmower, I mean, you can go in there with a weed  
24 whacker and cut the grass down. And so, you know, I know that  
25 there is -- you know, I'm not being convinced that there's not

1 a way that OP could be in support of this as to why, you know,  
2 even that fence has to be where it is other than now that I see  
3 -- I didn't see the cameras before. But again, that would be  
4 an expense. However, it seems to me as though there's a way  
5 that you know, HP and OP could be satisfied. And it would also  
6 work with the Embassy.

7 CHAIRPERSON HEATH: Did you have something Mr.  
8 Acosta?

9 MR. ACOSTA: Yes. I would agree with the comments  
10 that have been said. I think one of the obligations of this  
11 Board is to review against FM BZA criteria, which includes  
12 historic preservation. And before we overturn an opinion of  
13 the Preservation Board I think we owe it to ourselves and UOS  
14 to continue this discussion with Office of Planning. I do know  
15 that moving the equipment, and there may be cost associated  
16 with that and there may be other logistical issues. But you  
17 haven't -- we don't know what those are yet, in order to make a  
18 decision on this. And I think it will take a little more time  
19 for us to kind of get to the point where we could fairly make  
20 this decision.

21 So I would urge you to work with Office of Planning a  
22 few more times, and it is a process of iteration. And to see  
23 what the cost and benefits of some of these other options are.  
24 Again, it would be good to actually, if you did show us a  
25 scheme with a fence that is relocated and walked us through all

1 of the logistical issues and the costs that you may incur  
2 because of that, that would be helpful to us in order to make a  
3 final decision on this.

4 CHAIRPERSON HEATH: Is that clear? Do you have any  
5 questions on what's being requested?

6 [Pause.]

7 MR. KRUTIKOV: Okay. I mean, let's try to hear the  
8 continuance of this case.

9 CHAIRPERSON HEATH: Okay. All right. So, Mr. Moy,  
10 we're going to continue.

11 MR. MOY: Yes.

12 CHAIRPERSON HEATH: Allow the applicant to submit the  
13 additional information that's been requested.

14 MR. MOY: As far as the Board's docket, I mean, we  
15 can accommodate. I'm not clear how long it will take them to  
16 pull the information together, and plus when Peter May would be  
17 available because I don't have anything beyond today. Oh,  
18 okay. All right. Okay. So we're looking at March the -- let  
19 me double-check this date, Madam Chair. I believe it's March  
20 the 8th. March the 8th.

21 CHAIRPERSON HEATH: Okay.

22 MR. MOY: That would be good for the Board.

23 CHAIRPERSON HEATH: Okay.

24 MR. MOY: And then if the applicants can submit their  
25 information --

1 MR. KRUTIKOV: Is there any other date? Just, it's a  
2 holiday in the Russian Embassy, so.

3 CHAIRPERSON HEATH: What date? Because --

4 MR. MOY: Okay. We're contemplating, Madam Chair,  
5 either March 1st or March 8th, depending on participating  
6 members. March 1st would be preferable.

7 CHAIRPERSON HEATH: Would March 1st work for you?  
8 Not on a holiday?

9 MR. KRUTIKOV: March 1st is -- yeah, it will work for  
10 us.

11 CHAIRPERSON HEATH: Okay. All right. So March 1st.

12 MR. MOY: I'll move it.

13 CHAIRPERSON HEATH: All right.

14 MR. MOY: So then if the applicant can file their  
15 information at least a week prior, which would be February the  
16 23rd?

17 CHAIRPERSON HEATH: Okay.

18 MR. MOY: Thank you.

19 CHAIRPERSON HEATH: All right. And if you could  
20 continue working with Office of Planning and HPO to -- once you  
21 have some additional solutions that you can put in front of  
22 them, or work with them to come up with some solution that you  
23 both agree to before you come back here, that would be really  
24 helpful. It would be really helpful for us to know that  
25 they're in support of this solution before we see it. So I



1 encourage you to continue those discussions.

2 MR. HILL: Yeah, and just so that you don't waste  
3 your time, to be clear for myself, like you know, to go beyond  
4 the suggestions of Historic Preservation, like I'd really have  
5 to see why. Like why -- you know, what are the financial  
6 reasons, what's the security reasons. You'd have to convince  
7 me that you can't pull the fence back. Okay. Thank you.

8 CHAIRPERSON HEATH: All right. Thank you.

9 MR. MOY: So, Madam Chair, then it sounds like the  
10 Board is also seeking supplemental follow up report from the  
11 Office of Planning, and if they can provide that, let's say by  
12 Friday, which would be February the something. February the --  
13 I'll have that in a second. February the --

14 CHAIRPERSON HEATH: Twenty-sixth?

15 MR. MOY: -- 26th. Right?

16 CHAIRPERSON HEATH: Yes. Twenty-sixth.

17 MR. MOY: 2016. Okay.

18 CHAIRPERSON HEATH: Okay. All right. Thanks Ms.  
19 Thomas. And thank you. All right. So musical chairs again.

20 While we wait for Mr. Hinkle to rejoin us as we  
21 proceed with our -- the rest of our docket today, the next  
22 cases that we're going to hear I'll just let you all know the  
23 order of those.

24 The next will be appeal of ANC 3C, which is Case No.  
25 19155. After that we will hear from Application No. 19151,

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1 which is application of Saratoga Housing, Incorporated. The  
2 next will be Application No. 19157, that's the D.C. Department  
3 of General Services. After that will be 19158. That's Talal  
4 Ventures. The next will be 19159, which is application of  
5 Edward and Jessica Long. Then we will hear from Application  
6 No. 18400A, which is the Jewish Primary Day School. Our next  
7 application will be 19125, which is the application of Sanford  
8 "Sandy" Roskes, it looks like. Next will be 19112, which is  
9 307 Taylor Street Northwest. And then last we will have  
10 Application No. 19154 which is the District Design and  
11 Development of Argonne.

12 And that will be the end of our docket. Pretty  
13 exhaustive. So, Mr. Moy, does anybody need a break or are we  
14 good to -- okay.

15 MR. MOY: Okay. If not, then parties to Appeal No.  
16 19155 of ANC 3C. As advertised, an appeal of the decision of  
17 the Zoning Administrator to issue Building Permit No. B, B as  
18 in Bravo, 1511364 to permit a 10 space parking area in the R-2  
19 district at 26 -- rather 2926 Porter Street Northwest, Square  
20 2068, Lot 95. Also, Madam Chair, in your record there's a  
21 motion to dismiss by the property owner in Exhibit 16.

22 CHAIRPERSON HEATH: Okay.

23 MR. MOY: And I think DCRA has a filing as well, a  
24 motion to deny under their Exhibit No. 17, which was submitted,  
25 I believe, yesterday.

1           CHAIRPERSON HEATH: Okay. All right. Would  
2 everybody please introduce yourselves? We'll start to my  
3 right.

4           MR. TONDRO: Maximilian Tondro -- sorry. With DCRA,  
5 representing Zoning Administrator.

6           MR. LeGRANT: Matthew LeGrant, Zoning Administrator,  
7 DCRA.

8           MS. SIEGAL: Margaret Siegal, ANC 3C.

9           MR. ZWICKER: Glen Zwicker. I'm an attorney and  
10 representative of the 2926 --

11           CHAIRPERSON HEATH: It sounds like your mic is not  
12 on.

13           MR. ZWICKER: I'm sorry about that. Glen Zwicker.  
14 I'm an attorney and representative of the appellant, 2926  
15 Neighborhood and Safety Coalition.

16           MS. MacWOOD: Nancy MacWood, ANC 3C.

17           MR. YURECHKO: Douglas Yurechko, Adam Porter, LLC.

18           MR. COLLINS: Chris Collins, Holland and Knight  
19 representing the property owner.

20           MR. SHER: Steven E. Sher, Director of Zoning and  
21 Land Use Services with Holland and Knight.

22           CHAIRPERSON HEATH: Okay. So as Mr. Moy pointed out,  
23 we do have a motion before the Board filed by the owner to  
24 dismiss. And if the Board would agree rather than accept the  
25 motion to dismiss, I'd like to -- because the substance of the

1 motion really was more a reason to not approve the appeal than  
2 it was a reason to dismiss the case. I'd like to proceed to  
3 allow all parties to be heard today.

4 What I'd like to do if the Board agrees is just allow  
5 10 minutes for each party so that we can hear your statement.  
6 If you have anybody else that you'd like to speak as a witness  
7 on behalf of your party, you can let us know that at the  
8 beginning of your statement. But Mr. Moy will keep time and so  
9 we'll first hear from the appellant. We'll then hear from  
10 DCRA, and then the property owner, as long as you all are okay  
11 with that order.

12 Okay. So, Mr. Moy, if you could be our time keeper?

13 MR. MOY: Gladly, Madam Chair.

14 CHAIRPERSON HEATH: Okay. Go ahead.

15 MR. TONDRO: Madam Chair, just as a point of order,  
16 DCRA did file a motion just to clarify to deny the request of  
17 the certificate of occupancy, and DCRA would appreciate if we  
18 can -- if the Board would consider that issue first.

19 CHAIRPERSON HEATH: Okay. All right.

20 MR. ZWICKER: We can actually stipulate that our  
21 appeal as it relates to the certificate of occupancy only  
22 relates to the parking, which I think was something that you  
23 had proposed.

24 MR. TONDRO: Yes. Thank you.

25 CHAIRPERSON HEATH: Okay. All right. So we're okay

1 to proceed on that basis? Okay.

2 MR. TONDRO: Yes, thank you.

3 CHAIRPERSON HEATH: All right. Great.

4 MR. ZWICKER: Madam Chair, we were informed that we  
5 would have 45 minutes, which we would not need. But  
6 unfortunately there are about seven provisions that have been  
7 raised by the DCRA and the owner. We've got it down to maybe  
8 10, 15 minutes max in terms of running through those  
9 provisions.

10 CHAIRPERSON HEATH: Okay. All right. We'll allow  
11 the extra five.

12 MR. ZWICKER: Thank you.

13 CHAIRPERSON HEATH: So --

14 MR. ZWICKER: And I do have an outline of our  
15 statement to hand out so people can follow along.

16 CHAIRPERSON HEATH: Okay. Do you want to -- have you  
17 already distributed that?

18 MR. ZWICKER: No.

19 CHAIRPERSON HEATH: Okay.

20 MR. ZWICKER: This is just an outline of what I'm  
21 about to say.

22 CHAIRPERSON HEATH: Okay. If you want to distribute  
23 it make sure that the other parties at the table get a copy.

24 MR. ZWICKER: Of course.

25 CHAIRPERSON HEATH: And then you can give copies to

1 the Board Secretary.

2 MR. ZWICKER: Thank you. And thank you to the Board  
3 staff also. And in fact another way that I think we can be  
4 more brief is to not review the factual background here. I  
5 don't think there's much in dispute. Maybe some things will  
6 come up during the hearing, but if the Board is familiar with  
7 the facts at the property I'm happy not to review that.

8 CHAIRPERSON HEATH: We've reviewed the file.

9 MR. ZWICKER: Okay. Thank you. So then -- so these  
10 are really just interpretations of the different provisions  
11 that have come up in the hearings. In the prehearing  
12 submissions.

13 But just as a reminder this is a nonconforming 23  
14 unit apartment building located in the single-family home R-2  
15 district. The property's rear yard is also nonconforming in  
16 that it's much more shallow than the required 20-foot depth,  
17 and the property has existed with no more than three parking  
18 spaces for nearly 100 years. And those three parking spaces  
19 are not subject of this appeal. It's only the addition of 10  
20 new parking spaces.

21 So the issue at appeal before the Board is whether  
22 this new 10 car parking at a nonconforming 23-unit apartment  
23 building in the single-family home R-2 district should have  
24 been allowed as a matter of right, or whether the developer  
25 should be required to seek a variance or other form of zoning

1 relief.

2           There's no explicit reference to parking in an  
3 apartment building in R-2, unlike provisions which explicitly  
4 do reference parking for single-family homes in R-2 districts.

5   The Zoning Regulations generally don't contemplate apartment  
6 buildings in R-2 districts. So it's not surprising to see that  
7 there's no statement anywhere in the Zoning Regulations, which  
8 explicitly states that parking for apartment buildings is  
9 permitted as a matter of right in an R-2 district, or even as  
10 an accessory use in an R-2 district.

11           There are two lists of matter of right uses  
12 applicable to R-2 districts. They appear in sections 300.3 and  
13 201. There's nowhere in any of those matter of right lists  
14 does an apartment building use or parking for an apartment  
15 building appear.

16           The Zoning Administrator and the developer therefore  
17 had to try and stretch other provisions in the regulations to  
18 try and argue for something which doesn't appear. The DCRA and  
19 the developer focus on the new parking as a matter of right  
20 accessory use. It's true that Zoning Regulations provide for  
21 parking as a permitted accessory use for single family homes in  
22 an R-2 District. But the Zoning Regulations do not provide for  
23 matter of right accessory parking at an apartment building in  
24 an R-2 district.

25           The three provisions that the DCRA and the developer

1 are trying to stretch into creating parking for the property as  
2 a matter of right are 301.1, 2101.3, and 300.2. And I'll just  
3 go through each of them briefly in response to the assertions  
4 that they've made, starting with 301.1. And this is the most  
5 direct provision regarding accessory uses in R-2 districts. We  
6 have to read the language very carefully. If people have that  
7 section in front of them I don't need to quote it. But I'm  
8 happy to do so. Go ahead and read it. Okay.

9           So the section says, "The following accessory uses or  
10 accessory buildings, incidental to uses permitted for R-2  
11 districts in Sections 300 through 319, shall be permitted in R-  
12 2 districts."

13           It then lists three subsections. Subsection A is any  
14 accessory use permitted in R-1 districts under Section 202.  
15 Section B relates to car sharing spaces which is not relevant  
16 here. And Subsection C says, "Other accessory uses, buildings,  
17 or structures customarily incidental to the uses permitted in  
18 R-2 districts under this chapter, meaning Chapter 3.

19           So first of all the lead-in language for 301.1 refers  
20 to uses that are incidental to uses permitted for R-2 districts  
21 in Sections 300 through 319. "An apartment building is 100  
22 percent not a use permitted for R-2 districts in Sections 300  
23 through 319. An apartment building in an R-2 district is a  
24 nonconforming use under Section 2000." The DCRA and the  
25 developer have conceded that and there's no dispute on that.



1           Section 2000 is of course not within Sections 300  
2 through 319, nor are there any references in Sections 300  
3 through 319 to Section 2000, nonconforming uses. So really we  
4 can stop reading here and say that Section 301, which is the  
5 provision regarding accessory uses in an R-2 district does not  
6 provide for accessory parking for nonconforming apartment  
7 buildings in that district. But the DCRA and the developer  
8 have ignored that plan language at the lead-in, and they use  
9 Subsection C of Section 301 as a basis for arguing that the new  
10 10 car parking is allowed as a matter of right, so we should  
11 look at 301, Subsection C.

12           There again, I'm reading the whole provision. It  
13 refers to uses, "Incidental to the uses permitted in R-2  
14 districts under this chapter." And, this chapter, means  
15 Chapter 3. Again, "An apartment building is not a use  
16 permitted in an R-2 district under Chapter 3. It's under  
17 Chapter 20, Section 2000."

18           So it's worth noting, also, as you're deliberating,  
19 that the developer's brief and the DCRA's brief, they cut out  
20 language when they're paraphrasing and quoting these sections.  
21 They don't quote the entire section. I hope you all read the  
22 entire section there of 301.

23           2101.3 is the next section cited by the DCRA and the  
24 developer. The purpose of Section 2101 generally is to list  
25 required minimum parking for different uses. It says, "Nothing

1 contained in this section," meaning Section 2101.3, "shall be  
2 construed to prohibit the establishment of parking spaces  
3 accessory to buildings or structures for which no required  
4 parking spaces are specified in Section 2101.1, provided that  
5 each case complies with all other applicable provisions of this  
6 chapter, meaning Chapter 21 and Chapter 23.

7           So again, we need to read the language carefully, and  
8 the lead-in says, "Nothing contained in this section," meaning  
9 Section 2101, "prohibits the accessory parking." If the  
10 authors intended Section 2101.3 to mean that there is nothing  
11 in all of the Zoning Regulations prohibiting unlimited parking  
12 in excess of the required parking, they would have written that  
13 instead of what they did write.

14           But importantly, we've never argued that Section  
15 2101.3 itself, in a vacuum, prohibits the new parking. But  
16 there's nothing in Section 2101.3 which creates matter of right  
17 parking as an accessory use for an apartment building that's  
18 nonconforming in the single-family home R-2 district. The  
19 point is, there's a difference between not prohibiting  
20 something and explicitly creating it and permitting it as a  
21 matter of right, which is done by other sections.

22           Section 300.2 is the last section referenced by the  
23 DCRA and the developer in their matter of right accessory use  
24 arguments. But their reference to Section 300.2 is in effect,  
25 a repeat of the same failed argument that they make as it

1 relates to 2101.3, because it simply cross-references Chapter  
2 21, which includes Section 21.3. Again, there's nothing in  
3 Chapter 21 which creates the matter of right accessing parking  
4 at this nonconforming building. Furthermore, Section 300 or  
5 300.2 shows up, is a general provision and the provision  
6 setting out principle uses in R-2 districts. But as I said,  
7 301 is the specific provision which sets out accessory uses for  
8 buildings in the R-2 districts.

9           The second part of the argument really is whether --  
10 you know, we think if you've not established matter of right  
11 parking at the building, that that's enough for the Board to  
12 grant the appeal and require some other type of variance  
13 request or other zoning relief. But in fact there are  
14 provisions which would prohibit the new parking without the  
15 zoning relief. And that's where you turn to the  
16 nonconformities at the building.

17           Our December 27th pre-hearing submission lays out the  
18 background on the nonconformities, so I won't run through all  
19 of that in great detail, but I'll summarize it very briefly.  
20 We aren't challenging the three existing nonconforming uses of  
21 the building and its land, which are the nonconforming use of  
22 the land previously in the rear yard because of the  
23 significantly shallow depth below 20 feet. The nonconforming  
24 use of the eastern side of the building which has three parking  
25 spaces that we're not objecting to, and of course the use of

1 the building as an apartment building, which we're not  
2 objecting to.

3 But those first two nonconformities that I mentioned,  
4 they are not allowed to be changed, enlarged upon, expanded, or  
5 extended in violation of Sections 2000.2, 2000.3, and 2000.6.

6 The last section that I'll mention in terms of the  
7 core arguments is Section 202.7, which does place a limit on  
8 parking in the R-2 district. It's a parking maximum,  
9 notwithstanding the affidavit of the developer's paid  
10 consultant and statements by the other parties that the Zoning  
11 Regulations do not include any zoning maximums.

12 202.7 admittedly refers to single-family homes and  
13 not apartment buildings, but that's because apartment buildings  
14 are generally not contemplated in an R-2 district. I would  
15 just say that it wouldn't be logical to be more permissive in  
16 an interpretation for a building that is not contemplated for a  
17 single-family home district, and more restrictive for actual  
18 single-family homes that are contemplated in the R-2 district.

19 The other note on interpretation I would make that's  
20 also in our pre-hearing submission is that if there's any doubt  
21 over any of these legal complexities, we don't think there  
22 should be any doubt or ambiguity. But if there is any doubt  
23 the rules of interpretation under 101.2, 300, 101.1, 2000.2,  
24 and 2000.3, all work in favor of the appellants in this case  
25 and I'd be happy to walk through each of them, but won't do

1 that unless you all have questions.

2           So the last thing I'll do, only because it was  
3 brought up in the DCRA's motion and the developer's motion is  
4 briefly respond to two other points that they raised and may  
5 bring up. One is that other parking exists in the neighborhood  
6 and at the other nonconforming apartment buildings in the  
7 neighborhood. We agree. There is parking at other neighbors'  
8 properties and other apartment buildings. In fact, this  
9 building has three existing parking spaces that nobody is  
10 objecting to. But beyond that, that's not particularly  
11 relevant to the issue at hand. It may be relevant to a  
12 variance hearing, but none has been applied for.

13           And then the DCRA only, I believe, in their brief,  
14 raised Sections 214 and 302.1, and again we'd say those  
15 sections aren't relevant to the issue at hand because they  
16 relate to special exceptions for parking on a lot other than a  
17 lot, which is a principle use in R-1. Here the property is  
18 not being used for an R-1 permitted use. The parking is not on  
19 a separate lot, and if anything those sections only show that a  
20 special exception is not the right avenue in this case, that  
21 it's a variance.

22           So that would conclude my statement and review of I  
23 think all of the sections that are relevant here and we would  
24 just request that the Board take it under consideration and  
25 rule in favor of the appeal to not allow the additional 10 car

1 parking. Thank you.

2 CHAIRPERSON HEATH: Okay. Thank you. And you don't  
3 have anybody else that you wish to speak as part of your  
4 presentation?

5 MR. ZWICKER: Not as an opening statement.

6 CHAIRPERSON HEATH: Okay.

7 MR. ZWICKER: We tried to consolidate, but our ANC  
8 co-appellants may have something to add in the future.

9 CHAIRPERSON HEATH: Okay. All right. Before you  
10 make your statement, do you have any questions of the  
11 appellant?

12 MR. TONDRO: I think not at this moment.

13 CHAIRPERSON HEATH: Okay. All right. Does the Board  
14 have any questions of the appellant?

15 All right, then we'll allow Mr. Tondro to speak.

16 MR. TONDRO: Thank you, Madam Chair, Members of the  
17 Board. I think this -- we are in agreement, I think, in terms  
18 of the issues of the factual issues here at hand. I think it  
19 is a matter of some fundamentally -- of interpretation. At  
20 this point, as DCRA has explicated in the brief, the Zoning  
21 Administrator reviewed this, this particular case when it came  
22 in for the 10 parking spaces, and deemed to determine that it  
23 was permitted as an accessory use in the R-2 district under  
24 301.1C.

25 It is true that the apartment house was a preexisting

1 use. It is therefore a use that predated the Zoning  
2 Regulations, and therefore under 2000.4 it becomes effectively  
3 a permitted use. Not to be expended, but a permitted use.

4           These parking spaces with an accessory uses, and the  
5 reason that DCRA cited to Sections 2101.2 and 2101.3 are again  
6 to confirm the fact that the parking -- required parking  
7 established under Chapter 21, those are not maximums. Those  
8 are simply minimums. And that therefore under that a property  
9 owner is allowed to provide more parking as they deem fit,  
10 provided they correspond or they follow or comply with all of  
11 the regulations in terms of where those parking spaces may be  
12 located.

13           On this particular circumstance in the R-2, Section  
14 300.2 does pull in Chapter 21, along with the other chapters.  
15 And therefor explicitly refers to that ability to create  
16 additional accessible parking units. As we stated in the brief  
17 the section cited by appellants in terms of limiting --  
18 providing a specific parking maximum in the R-2 district,  
19 Section 202.7, that one is limited to a single-family dwelling  
20 only. And therefore as a result is a very narrow exception  
21 that's not what is subject to this particular case.

22           Second, moving on to the issue of the rear yard.  
23 Again, as we stated in the brief, this parking spaces in the  
24 rear yard, provided they comply with Chapter 21 in terms of not  
25 being located between the building restriction line and the

1 street, amongst other things, being industrial district and so  
2 forth, in this particular case they do not conflict with those  
3 limitations. The parking spaces have no -- are not barred from  
4 being located in a required rear yard. Therefore, appellant's  
5 argument that somehow the provision of the parking spaces  
6 increase the nonconformity of the existing rear yard, I think  
7 is a nonstarter from that one. And I pointed out in my brief  
8 as well that under Chapter -- I'm sorry, under Section 2503,  
9 they're even allowed to have -- the Zoning Regulations allow  
10 structures up to four feet in height in required yards.

11 So in other words, a parking space is much less than  
12 a structure up to four feet tall. And with that addressed I  
13 will say that for DCRA, as we go forward, we would like to  
14 present Mr. LeGrant, the Zoning Administrator to present his  
15 logic in more detail. Thank you.

16 CHAIRPERSON HEATH: Okay.

17 MR. LeGRANT: Thank you, Max. So the -- I think part  
18 of the assertion was that I had stretched the Zoning  
19 Regulations to accommodate this accessory parking and that's  
20 just not the case.

21 As Mr. Tondro mentioned, the accessory parking is a  
22 permitted use in all of our zoning districts. The fact that  
23 this is a nonconforming use, an apartment house in a R-2  
24 district is not germane to the issue of the parking aspect.  
25 The analysis that I went through was, okay, is this parking --



1 I accepted that under 2101.2 that there is no limitations on  
2 the number of parking spaces, that accessory parking is  
3 allowed, not only in the subject case but this is a very often  
4 occurrence of property owner placing additional parking above  
5 and beyond the minimum requirement.

6 So then the next step is to insure that that location  
7 of those parking spaces is permitted, and it was also mentioned  
8 by my counsel, this was not between a restriction line and the  
9 front property line, nor is it between the façade of the  
10 building and a street line as set forth in 2117.

11 With that, you know, I concluded that the additional  
12 10 accessory parking spaces in addition to the preexisting  
13 three parking spaces that existed here, or were permitted, were  
14 not an expansion of a nonconforming use, and met the other  
15 requirements set forth in Chapter 21 that governed the location  
16 of parking spaces.

17 So with that I found no basis to deny the application  
18 in placing the parking spaces where they were shown to me on  
19 the submitted plat, and my office approved those. So that was  
20 the basic steps of the logic of coming to a conclusion that the  
21 parking spaces request the accessory parking spaces that were  
22 requested were permitted, in fact, under the Zoning  
23 Regulations.

24 CHAIRPERSON HEATH: Okay. Thank you. Does the Board  
25 have any questions of the Zoning Administrator or DCRA?

1           MR. MAY: Mr. LeGrant, do you recall other cases in  
2 recent memory where an apartment building that is nonconforming  
3 added parking spaces and that it was permitted as a matter of  
4 right?

5           MR. LeGRANT: I don't recall a specific case offhand.  
6 I believe that probably in the course of my tenure that that  
7 has come before me. Typically, I can say that a very often  
8 occurrence is for a flat, which I think we're all aware here  
9 has a requirement of one parking space, that flats, even a flat  
10 in a nonconforming flat in an R-1, R-2, or R-3 zone, often will  
11 come in with an application for two parking spaces. So that's  
12 the one required, and then one accessory additional parking  
13 space above and beyond the one required. And I find -- my  
14 office has found that's a very common occurrence.

15           MR. MAY: So what do you say to the argument that  
16 there is a limitation on parking for other conforming uses? So  
17 for just single-family detached dwellings or single-family  
18 homes, there is a restriction. You can have -- I mean, you're  
19 required to have one, but you can have two. What do you say to  
20 that? I mean, does that -- it seems to me that that might  
21 imply that the Zoning Commission, when they drafted this  
22 regulation, and admittedly I wasn't there when it was drafted,  
23 that that might represent a desire to actually limit the amount  
24 of parking that can be on any given lot in that zone.

25           MR. LeGRANT: Well, I've never seen a precedent for

1 that. I've never seen a decision by this Board, nor an  
2 interpretation by one of my predecessors in that regard. I  
3 don't -- I'm just now finding -- found anything, single-family  
4 homes aside, in the regulations that I have seen it in that  
5 regard.

6 MR. MAY: But you don't regard the notion that there  
7 is a two-car limit, right? I mean, I'm sorry. Is it two car  
8 or is one car? I don't recall.

9 MR. ZWICKER: It's one required, plus either one  
10 additional or two car sharing spaces.

11 MR. MAY: Got it. So maximum of three on any given  
12 lot. I mean, you don't regard that as sending a message that  
13 there shouldn't be large parking lots in the R-2 zone?

14 MR. LeGRANT: If it is sending a message it's an  
15 unclear message to me.

16 MR. MAY: Okay.

17 MR. LeGRANT: And it's not a parking lot. A parking  
18 lot is defined as a principle use of a particular lot. So it's  
19 accessory parking.

20 MR. MAY: Got it. I understand. Okay. Thank you.

21 CHAIRPERSON HEATH: Okay. All right. Does the  
22 appellant have --

23 MR. ZWICKER: Well, I guess the question is whether  
24 an opportunity to kind of rebut whether we want to let the  
25 developer go first or whether we want to do it kind of one at a

1 time. I think whatever the Board --

2 CHAIRPERSON HEATH: If you have questions of the  
3 Zoning Administrator you can ask them at this time.

4 MR. ZWICKER: Well, I mean, I guess the question is -  
5 - yes, you know, we're talking about a very limited  
6 disagreement here. Accessory use parking generally is  
7 permitted at properties in the District. But Section 301  
8 specifically sets out accessory uses for the R-2 district, and  
9 it refers to uses permitted under the Chapter 3. And an  
10 apartment building is not a use permitted under Chapter 3.

11 So we're talking about an accessory use to a  
12 principle use that is not permitted under Chapter 3. It's  
13 permitted under Chapter 20. But Section 301 refers to  
14 accessory uses, buildings or structures, customarily incidental  
15 to the uses permitted in R-2 districts under this chapter.

16 CHAIRPERSON HEATH: What's your question?

17 MR. ZWICKER: Well, the question is, why are you  
18 ignoring the words, "Under this chapter," on every time that  
19 you refer to accessory parking for this building.

20 MR. LeGRANT: Well, the -- in addition to -- I guess  
21 what drives this is there is an accessory park -- an accessory  
22 use provision. And that also includes accessory uses,  
23 customary to a use.

24 MR. ZWICKER: I'm sorry, customary to a use under  
25 this chapter.

1           MR. LeGRANT: Okay. Well, the -- as is pointed out  
2 by my counsel, a nonconforming use is not deemed a  
3 nonconforming use but by its definition. And as such a  
4 nonconforming use is permitted and allowed to continue as long  
5 as it's not enlarged or expanded. So my take has been that,  
6 that is a use that is permitted to continue. And you could  
7 argue, well, under Chapter 3 or Chapter 20 --

8           MR. ZWICKER: That's exactly what we're arguing.

9           MR. LeGRANT: -- the provisions of the code were  
10 permitted to continue, has been my take. And that as such an  
11 accessory use such as parking that is customary to that use, is  
12 permitted.

13          MR. ZWICKER: Yeah. I mean, I think you hit it on  
14 the head. We are exactly arguing about whether it's permitted  
15 use under Chapter 3 or under Chapter 20.

16          MR. LeGRANT: Okay.

17          CHAIRPERSON HEATH: Any other questions from the  
18 appellant? Okay.

19          MR. ZWICKER: Not at this time.

20          CHAIRPERSON HEATH: Okay. Then I neglected to ask if  
21 you, as the property owner, had any questions of the appellant.  
22 You can either ask those now or make your statement at this  
23 time.

24          MR. COLLINS: We have no questions.

25          CHAIRPERSON HEATH: Okay. Thank you.

1           MR. COLLINS: Madam Chair, just a few things. We did  
2 file a motion to dismiss. You can treat that as a request to  
3 deny. The arguments are exactly the same.

4           What is also exactly the same is what this applicant  
5 has done on this site similar to the other R-2 nonconforming  
6 apartment houses in the neighborhood. We've given three  
7 examples. I've looked through the BZA database, I looked  
8 through our own database, which goes back farther in our law  
9 firm. And I found no pre or post 1958 cases that required some  
10 kind of BZA review for those accessory parking spaces on those  
11 nonconforming apartment house properties.

12           There is no basis in the Zoning Regulations, either  
13 in the express language or in the longstanding interpretations  
14 to support the appellant's position that the addition of 10  
15 parking spaces in the side and rear yard is prohibited.

16           We out line in our -- on page 4 of our motion, two  
17 central questions. All the filings that the appellant have put  
18 in come down to really two central questions. Number one, are  
19 the 10 additional accessory parking spaces permitted as a  
20 matter of right, or are they a nonconforming use and an  
21 enlargement or expansion of the nonconforming apartment house?

22           And secondly may a property owner provide accessory parking on  
23 site, even if the parking is not required by the Zoning  
24 Regulations, by Chapter 21 of the Zoning Regulations.

25           The answers are that accessory parking on site is a

1 matter of right use in the R-2 zone per section 300.2.  
2 Everyone is talking about 301.1 and parsing the language there.  
3 But Section 300.2 says, "Except as provided in Chapter 21,"  
4 which is the parking provision, "Except as provided in Chapter  
5 21 in an R-2 district no building or premise shall be used  
6 except in accordance with Sections 301 through 319."

7 So they except out the accessory parking. Accessory  
8 parking is always permitted in every zone for every use.

9 Secondly, and Section 202.7 doesn't apply in the R-2  
10 zone. We talked about that a little bit. It's an R-1 use.  
11 It's not an -- it's a limitation of the R-1 zone.

12 Secondly, the addition of accessory parking is not an  
13 expansion of a nonconforming use. Accessory parking is  
14 permitted as a matter of right. It's not a nonconforming use.

15 The nonconforming apartment house has not been expanded by the  
16 addition of the matter of right accessory parking on site. Nor  
17 has the nonconforming apartment house use been changed to  
18 another use by the addition of the matter of right accessory  
19 parking, both of which were alleged by the appellants.

20 "Section 2101.3 allows an owner to provide parking  
21 spaces for as accessory to any property, even if Section 2101.1  
22 does not set forth a requirement for parking at all."

23 These provisions read together show that accessory  
24 use, accessory parking, is permitted as a matter of right in  
25 the R-2 zone for any use and that the Section 2101.3 allows you

1 to provide more than the minimum required.

2 Now it's important to understand here, it's a couple  
3 other facts. This building was purchased by the owners, the  
4 current -- by the developer under the Tenant Opportunity to  
5 Purchase Act. And they worked with the occupants to allow them  
6 to purchase their units and remain, and many of them did. And  
7 it was converted to a condominium. Half of these 10 parking  
8 spaces were sold as of the date of the appeal. They are now  
9 owned by the owners who own units within the building. So they  
10 are -- they would be extremely affected by this new and novel  
11 and unusual interpretation that the appellants are asking you  
12 to adopt.

13 At this point I'd like to turn it over to Steve Sher.  
14 Mr. Sher.

15 MR. SHER: Madam Chairperson, Members of the Board,  
16 for the record my name is Steven E. Sher, Director of Zoning  
17 and Land Use Services with the law firm of Holland and Knight.

18 In the first place it is my opinion that the Zoning  
19 Administrator was correct in issuing permits to allow for  
20 additional accessory parking on this property.

21 MR. COLLINS: May I interrupt?

22 MR. SHER: Yes.

23 MR. COLLINS: Mr. Sher, have you testified previously  
24 before this Board as an expert witness?

25 MR. SHER: Yes.

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1           MR. COLLINS: I would ask that the Board accept Mr.  
2 Sher as an expert in the zoning and the application of the  
3 Zoning Regulations in the District of Columbia.

4           CHAIRPERSON HEATH: We will.

5           MR. ZWICKER: Can I just -- we don't object to Mr.  
6 Sher being admitted as an expert. I'd just point out that the  
7 Board has also differed with you in some of your expert  
8 testimony in the past. Is that not correct?

9           I'll answer the question.

10          MR. SHER: I guess so, but --

11          MR. ZWICKER: Okay. Okay. So I think we'll give --

12          MR. MAY: I'll stipulate that. I'd disagree with Mr.  
13 Sher in the past.

14          MR. ZWICKER: Okay.

15          MR. MAY: But that doesn't --

16          MR. ZWICKER: No, no --

17          MR. MAY: Let him make his case.

18          MR. ZWICKER: Yes, of course.

19          MR. SHER: Okay. I'll restate my view, my opinion  
20 that the Zoning Administrator was correct in issuing permits to  
21 allow for the installation of 10 accessory parking spaces in  
22 the rear and side yards of this building. Nothing that I am  
23 aware of in the Zoning Regulations prohibits establishment of  
24 accessory parking spaces on the same lot as the principle use  
25 to which they are accessory, in a number that exceeds the

1 number that might otherwise be required, of course recognizing  
2 that this is a nonconforming apartment house use which by  
3 definition under the regulations and by requirements of the  
4 regulations is allowed to be continued forever. But that the  
5 use here as is the case for uses permitted in R-2 zones, R-1  
6 zones, and any other zone, are allowed to have accessory  
7 parking spaces.

8           In fact, many cases the regulations require accessory  
9 parking spaces. So to say that you're not allowed to have  
10 accessory parking spaces, or to imply that there is somehow a  
11 limitation the number of parking spaces that can be provided,  
12 is contrary to my understanding of the regulations the way  
13 they've been applied and the way they have been interpreted to  
14 allow parking of any number of spaces beyond the minimum  
15 required, even if that minimum is zero.

16           As Mr. Collins indicated earlier, and as I set forth  
17 in an affidavit which was filed in the record, this does not  
18 constitute an expansion, enlargement, or extension or change of  
19 the nonconforming apartment house use. Apartment house use is  
20 in the building, the units are there, they're not changing.  
21 What's being added are parking spaces; parking spaces which are  
22 allowed, in my view, under the regulations, and which are  
23 therefore being provided in accordance with the regulations.

24           I have not ever come across a situation where a  
25 nonconforming use was not allowed to have parking as any other

1 use. Nonconforming uses are permitted by Chapter 20. They are  
2 allowed to continue, remain, and operate within the  
3 requirements of Section 2000 -- let me get the right number.  
4 2003. And therefore -- sorry, 2002, not 2003. And therefore I  
5 believe that allowing these parking spaces in the rear and side  
6 yards is completely consistent with what the regulations  
7 provide for and that to have said you could not do them would  
8 be contrary to what the regulations provide. And that is why I  
9 believe the Zoning Administrator was correct in approving the  
10 permit and allowing the spaces to be established.

11 MR. COLLINS: So in conclusion, Madam Chair, there is  
12 nothing in the regulations to support the applicant's position.  
13 No fair reading of the plan language of the regulations  
14 supports the applicant's reading. There's no case law that's  
15 been cited to support the applicant's position. There are no  
16 prior interpretations cited to support the applicant's  
17 interpretation. They have not carried their burden of proof on  
18 this appeal. Thank you.

19 CHAIRPERSON HEATH: Does the Board have any questions  
20 of the property owner?

21 Does the appellant have any questions of the property  
22 owner?

23 MR. ZWICKER: Sure. I guess for Mr. Sher or Mr.  
24 Collins, and this kind of follows up with Mr. May's question,  
25 this building probably has room for another 20 or 30 parking

1 spaces in its side yards, so is it your contention that that  
2 would be allowed as well, so long as they were the right size  
3 and five percent of the land was taken up with landscaping?

4 MR. SHER: Assuming that it met all of the other  
5 locational and other applicable criteria, the answer to that  
6 would be yes.

7 MR. ZWICKER: Uh-huh.

8 MR. SHER: Parking is permitted incidental to uses  
9 that are otherwise permitted in a zone, including in a R-2  
10 zone.

11 MR. ZWICKER: Okay. I mean, I think we're making  
12 statements that are just in conflict with one another and it's  
13 probably more productive to have the Board ask questions than  
14 me.

15 CHAIRPERSON HEATH: Okay. All right. So that  
16 concludes your questions?

17 MR. COLLINS: May I add a redirect to Mr. Sher?

18 CHAIRPERSON HEATH: Sure.

19 MR. COLLINS: Mr. Sher, you heard the question was  
20 that could 20 or 30 additional parking spaces be added to this  
21 site. You have in front of you the plat which shows the  
22 parking spaces that's been submitted several times as an  
23 exhibit in the record here. It's, we're looking at the one  
24 that's identified as Exhibit C.

25 In your view could 20 or 30 additional parking

1 spaces, given the fact that there is alley access only in a few  
2 areas, be added to this site?

3 MR. SHER: It doesn't appear that way but I don't  
4 know anything about whether there are obstructions or whether  
5 there are issues that would prevent that from happening beyond  
6 what's shown on a two-dimensional black and white drawing at  
7 this scale.

8 MR. COLLINS: But it's your testimony that under  
9 Section 2116 there are limitations, that is the section that  
10 provides limitations on where parking can be located on the  
11 lot.

12 MR. SHER: Yes.

13 MR. COLLINS: Thank you.

14 CHAIRPERSON HEATH: Okay.

15 MR. TONDRO: Madam Chair.

16 CHAIRPERSON HEATH: Yes.

17 MR. TONDRO: DCRA has one question for Mr. Sher.

18 CHAIRPERSON HEATH: Sure.

19 MR. TONDRO: If I may? Thank you.

20 Mr. Sher, could you turn to Section 300.2?

21 MR. SHER: I can. I can.

22 MR. TONDRO: Thank you. And could you just elaborate  
23 on how you see that interacting with the rest of the provisions  
24 for section -- in terms of the uses that are allowed in the R-2  
25 district?

1           MR. SHER: My understanding of Section 300.2 says  
2 that if I have a building in an R-2 district then these are the  
3 limitations that apply to what I can do witness that. I don't  
4 think that that limits, for example, what I could do with a  
5 nonconforming use, provided I otherwise meet the requirements  
6 of Chapter 20, Section 2002.

7           MR. TONDRO: Thank you. Sorry. I should be perhaps  
8 a little bit clearer. In terms of 300.2 where it refers to  
9 Chapters 21 through 25, can you just explicate your  
10 interpretation of how that applies?

11           MR. SHER: I'm not sure I understand. Right. When  
12 you look at the regulations, the structure of the regulations  
13 starting with the beginning of Chapter 3, Section 300 talks  
14 about the R-2 district generally. Section 300 -- that's 300.1,  
15 sorry. 300.2 says here is what you can do in that district.  
16 And then it's 300.3 goes on in further detail. Chapters 21,  
17 22, 23, 24, and 25 are provisions of the regulations that apply  
18 across the regulations, not just to an R-2 district. So  
19 Chapter 21 is parking, Chapter 22 is loading, Chapter 23 are  
20 parking lots and garages, Chapter 24 are planned unit  
21 developments, Chapter 25 are miscellaneous provisions. They  
22 may have effect. In fact, in this case they probably have very  
23 little effect. PUDs certain have no effect. Off-street  
24 loading has no impact here. So they may apply here, and they  
25 may not.

1           MR. TONDRO: But in terms of this particular case the  
2 limitations that the appellants have raised in terms of the  
3 number of uses -- the specific uses that are allowed within the  
4 R-2 district, is it your understanding that 300.2 states that  
5 there is an exception for those provisions that are laid out in  
6 Chapters 21 through 25?

7           MR. SHER: Yes.

8           MR. TONDRO: Thank you.

9           MR. ZWICKER: Can I redirect also? Mr. Sher, is it  
10 your view that Section 301, titled Accessory Uses in Buildings  
11 R-2, does not set out all of the accessory uses that are  
12 permitted as a matter of right in an R-2 district? Section  
13 301, titled Accessory Uses in Buildings, R-2.

14           MR. SHER: I'm looking at 301, and yes it tells you  
15 what accessory uses are permitted, but it's pretty broad.

16           MR. ZWICKER: Well, but what is the connection if 301  
17 sets out the accessory uses that are permitted as a matter of  
18 right in an R-2 district? Please make the connection between  
19 that and Section 2101.

20           MR. SHER: Section 2101 sets out the requirements for  
21 off-street parking for uses in all zones. Most zones have --  
22 most uses have a parking requirement. Not every use has a  
23 parking requirement in every zone. 2101 -- Chapter 21 tells me  
24 where I have to provide parking. 2101 tells me how much  
25 parking I have to provide. The other sections talk about

1 access, maintenance, operation, location, et cetera.

2           You have to comply with all of those requirements as  
3 well as the requirements of Section 301 for accessory parking  
4 spaces on a lot which has the principle use on it.

5           MR. ZWICKER: Uh-huh. I guess it's our contention  
6 that 301 is not being complied with. But the purpose of  
7 Chapter 21, as you suggested, is to set out the requirements  
8 for parking spaces. 2101.2 or 2101.3 --

9           MR. SHER: Is there a question?

10           MR. ZWICKER: Yes, there is a question. What do you  
11 think 2101.3 means when it says, "Nothing contained in this  
12 section shall be construed to prohibit the establishment of  
13 parking spaces in addition to the required amounts?" Why does  
14 it say, nothing contained in this section as opposed to some  
15 other statement? Or what does it mean, "In this section?"

16           CHAIRPERSON HEATH: Which section are you reading  
17 again?

18           MR. ZWICKER: 2101.3, which is the provision cited by  
19 the DCRA that it's relying on to allow accessory use parking as  
20 a matter of right.

21           MR. SHER: Chapter 21, Section 2101 sets out the  
22 schedule for required parking. I believe 2101.3 says, if you  
23 want to provide more parking than the minimum required or --  
24 let's see, which is the one that says -- 2101.2 says, if you  
25 want to provide more. 2101.3 says if no parking is required



1 there is no limitation on the number of parking spaces that you  
2 can provide as an accessory situation.

3 MR. ZWICKER: Okay. You didn't really answer the  
4 question. What do you interpret, "Nothing contained in this  
5 section," to mean? Would it be possible for another section of  
6 the Zoning Regulations to prohibit the establishment of parking  
7 spaces accessory to buildings for which no required parking is  
8 allowed?

9 MR. SHER: It would be, but I'm not familiar that  
10 there is any such section.

11 MR. ZWICKER: Okay. We laid out the sections that  
12 do, so I'll leave it at that.

13 MR. SHER: Okay.

14 CHAIRPERSON HEATH: All right. Any other questions  
15 from the appellant? All right.

16 MR. COLLINS: More redirect to Mr. Sher.

17 CHAIRPERSON HEATH: Sure.

18 MR. COLLINS: Mr. Sher, the interplay between Section  
19 300.2, and I'll save you the flipping of pages by putting the  
20 book in front of you, 300.2 references what can be done in the  
21 R-2 districts, with an exception of -- exception provided in  
22 Chapters 21 through 25. And Chapter 21 is, you've testified in  
23 the past, is the parking section of the regulations.

24 The interplay between Section 300.2 and 2101.3, does  
25 that respond to, in your view, to the question that was posed

1 to you by appellant's counsel?

2 MR. SHER: My view of this is that accessory parking  
3 is permitted incidental to a principal use on a property  
4 without limitation as to the number of spaces and maybe  
5 provided as long as it meets the locational and dimensional and  
6 size and whatever other applicable regulations there may be to  
7 that accessory parking. That is the way I believe that the  
8 regulations have been interpreted and applied in 45 years I've  
9 been doing this.

10 MR. COLLINS: Does Section 300.2 in fact allow for  
11 accessory parking interview he R-2 zone for any use in the R-2  
12 zone?

13 MR. SHER: Well, 300.2 was -- along with 301, deals  
14 with accessory uses.

15 MR. COLLINS: Right. Right. My question is about  
16 the parking. Specifically, 300.2 specifically references  
17 Chapter 21. Does that section read in conjunction with 2101.3,  
18 allow in your view, the accessory parking that's been provided  
19 on this site?

20 MR. SHER: Yes, in my view accessory parking is  
21 allowed in an R-2 district for an apartment house.

22 MR. COLLINS: Thank you.

23 CHAIRPERSON HEATH: All right. Any other questions?  
24 Okay. Does the Board have any other questions?

25 MR. HILL: I just have a quick question for the

1 appellant. Whether or not again you've met the burden, that's  
2 one thing. And so but I'm just curious now, you don't want the  
3 parking. Right? Like you would like the grass to return. I  
4 mean, I'm a little confused as to -- and I'm just now asking,  
5 you know, you know, if the parking wasn't there, those cars are  
6 now going to be on the streets. Like what is it that you want?  
7 You just want it to go back to the yard?

8 MR. ZWICKER: Well, I think that would be the subject  
9 of a variance, but I'll give the highlights. The building has  
10 existed for almost 100 years with three parking spaces. Those  
11 three parking spaces are not in dispute. It is the -- there's  
12 safety, light, noise, other issues, snow removal, stuff like  
13 that, that would be the subject of a variance hearing if the  
14 developer were to apply for a variance. Those would be the  
15 reasons. And I'm sure there are uses for the yard. That would  
16 be up to the owner of the property. That's not really for the  
17 neighbors to decide as long as it complies with the Zoning  
18 Regs.

19 MR. HILL: Okay.

20 CHAIRPERSON HEATH: Mr. May?

21 MR. MAY: Yeah, I have a question for Mr. Sher or Mr.  
22 Collins, whoever wants to answer it. So if this were a  
23 slightly different case, imagine that this were actually an R-2  
24 -- an apartment building in R-2 and there was some sort of  
25 expansion of the nonconforming use that was contemplated,

1 they're going to build an addition on it. Assume there's room  
2 for -- I'm not talking about the merits of such a case. But in  
3 that sort of circumstances would the expansion trigger a  
4 requirement for parking, and would that requirement apply for,  
5 you know, all units or just for the expanded use?

6 MR. SHER: Well, in the first place it would depend  
7 on how far the building was expanded. You can expand it up to  
8 25 percent if it's -- this is historic district, right?

9 MR. MAY: Well, just assume that it's expanded enough  
10 to trigger --

11 MR. SHER: All right. Well, it's an historic  
12 district so may not ever get to that --

13 MR. MAY: May not ever get to that. Got it.

14 MR. SHER: If you take that away --

15 MR. MAY: Yeah.

16 MR. SHER: -- you have an apartment building sitting  
17 in an R-2 district somewhere --

18 MR. MAY: Right.

19 MR. SHER: -- that's not historic, and it's a little  
20 tiny building and you want to put a great big addition on it,  
21 yeah, you'd have to deal with parking somehow.

22 MR. MAY: And in that -- in the circumstances where  
23 you are in an historic district and you want to do an  
24 expansion, there's certainly nothing that prevents you from  
25 adding parking in that circumstance. That's your contention?

1 MR. SHER: Yes. Well --

2 MR. MAY: Because it's a --

3 MR. SHER: -- you've got to deal with the historic  
4 end of the thing if you have to.

5 MR. MAY: Right.

6 MR. SHER: But the fact that it's historic or not  
7 historic, in my view doesn't change that parking --

8 MR. MAY: Right.

9 MR. SHER: -- accessory parking is permitted.

10 MR. MAY: Yeah. Okay. Thanks.

11 CHAIRPERSON HEATH: All right. Does the appellant  
12 have any further comments? If not, we will conclude the  
13 hearing. Did you have -- okay. All right. So we'll allow you  
14 to -- did you have a statement you want to make or --

15 MS. MacWOOD: We're joined in the appeal. I would  
16 like to just make a short statement. I'd like to, if --  
17 whenever it's appropriate.

18 CHAIRPERSON HEATH: Right now. Before we conclude.

19 MS. MacWOOD: I think that would be a good idea.

20 CHAIRPERSON HEATH: Okay.

21 MS. MacWOOD: I'm Nancy MacWood, ANC 3C-09, and also  
22 the co-chair of ANC 3C's Planning and Zoning Committee.

23 When the neighbors brought this issue to our  
24 attention there were a couple factors in play. One is that  
25 we've had several cases involving nonconforming properties in

1 our ANC this past year, so they are on our radar, and we feel  
2 very strongly about nonconforming uses and structures being  
3 rigidly controlled per the requirements in the Zoning  
4 Regulations.

5 We also have great respect for the Zoning  
6 Administrator, Mr. LeGrant. We've had a lot of experience with  
7 him over the years. He has an enormous responsibility. He's  
8 interpreting the Zoning Regs thousands and thousands of times  
9 over. So we certainly considered that but we've also found  
10 that on occasion, perhaps rare occasions, Mr. LeGrant errs.

11 So particularly because this is a nonconforming  
12 property we wanted to look at it very carefully. Personally, I  
13 have a great deal of respect for Mr. Sher. Fortunately, he  
14 wasn't involved with this in the very beginning and only became  
15 involved more recently.

16 But the process that the ANC went through, because we  
17 wanted to look at this very methodically, is to look at the R-2  
18 zone. There was no question that we had an apartment building  
19 as the principle use on an R-2 lot. So we looked at the  
20 accessory regulations to see if this additional parking was  
21 authorized. There's been a lot of discussion about the  
22 permission for parking for single family dwellings. I don't  
23 think that's in dispute. That is listed as a permitted use in  
24 an R-2 zone.

25 There is nothing in the accessory provisions that

1 talk about apartment buildings in an R-2 zone. So we concluded  
2 that you've got to look further. That chapter in the R-2 zone  
3 also talks about customarily, incidental, accessory uses to an  
4 authorized use. But an apartment building is not an authorized  
5 use in an R-2 zone. So we looked further.

6 We then went to Section 2101.1 to see if there was  
7 required, in addition to the permission since we couldn't find  
8 permission for accessory parking for an apartment building.  
9 Was there required parking spaces for an apartment building.  
10 We found all sorts of required parking for apartment buildings,  
11 but none in R-2.

12 So we kept looking. The Zoning Administrator, a  
13 lawyer in his office sent us an e-mail, the ANC an e-mail, and  
14 said, "What we relied on was 2101.3." So we looked at 2101.3.  
15 Our interpretation of that section is that it is not a  
16 permission, it's not an additional requirement. It simply says  
17 that whatever is required doesn't prohibit additional parking.  
18 But that didn't provide any additional information for us so  
19 we thought, okay, we've got to look further still.

20 So since an apartment building in an R-2 zone is  
21 nonconforming, we went to Chapter 20. And we looked at those  
22 regulations. And one of the things that it says in Chapter 20,  
23 2000.3 states that all uses and structures incompatible with  
24 permitted uses or structures shall be regulated strictly and  
25 permitted only under rigid controls to the extent permitted by

1 the Zoning Act.

2           The Zoning Administrator says that a nonconforming  
3 use should be treated like a permitted use. That section says  
4 to us, it's just the opposite. That a nonconforming use is not  
5 a permitted use. It should never be treated as a permitted  
6 use, and in fact it should be rigidly controlled and strictly  
7 regulated. And there's nothing in that chapter that talks  
8 about accessory parking, or talks about any kind of parking.

9           So we concluded that there was no matter or right  
10 permission or requirement for accessory parking for an  
11 apartment building in the R-2 zone. But that there was a  
12 remedy and that the remedy would be more likely than not an  
13 area variance and a use variance so that there is a remedy,  
14 there is a process that would be a public process. The  
15 community would be involved; the ANC would be involved. We  
16 would have the opportunity to protect our less dense  
17 neighborhood from a much more dense use in R-2. And that would  
18 be a fair proceeding and we thought a fair way to work this  
19 out.

20           But despite everything that I've heard today I still  
21 haven't heard anyone point to a particular section in the code.  
22 I've heard a lot about, well, this is our practice and this is  
23 what -- but I would love it if somebody could point to a  
24 specific provision in the code that the ANC missed, that says  
25 notwithstanding all the rest of this, that a non -- you can



1 have unlimited accessory parking for a nonconforming apartment  
2 building in an R-2 zone. So we urge the Board to approve the  
3 appeal and to overturn this permit and require that there be an  
4 additional public process to determine this issue.

5 CHAIRPERSON HEATH: Thank you. Does the Board have  
6 any other comments or questions before we conclude the hearing?

7 Okay. All right. Then we'll conclude this, the  
8 hearing on this appeal. What I would recommend to the Board is  
9 that we put this on for decision. We've heard a lot of  
10 sections of the code and some of them we were reading as we  
11 went through, but I'd like to take some time to go through them  
12 in more detail prior to deciding this. Is that okay? All  
13 right. All right.

14 So, Mr. Moy.

15 MR. MOY: Well, two questions from me, Madam Chair.  
16 First is -- and I know now that Peter May will be here March  
17 1st.

18 CHAIRPERSON HEATH: Uh-huh.

19 MR. MOY: And also, we're not -- and/or March 8th.  
20 So those two potential dates for this, scheduling this for  
21 decision. And then whether or not the Board wanted any draft,  
22 findings of fact, conclusions of law or not. It's up to you.

23 CHAIRPERSON HEATH: You have a lot of information  
24 already. I'm fine to accept findings of facts and conclusions  
25 of law from each of the parties on this. If those are

1 submitted to the record, Mr. Moy, what's the date by which they  
2 need to be submitted?

3 MR. MOY: Okay. If the decision is going to be by  
4 the Board, March 1st, then this could be received in the record  
5 to the BZA by February the -- February the -- let's say Monday,  
6 February 22nd.

7 CHAIRPERSON HEATH: The 22nd. Okay. All right. So  
8 decision, March 1st. Okay. Thank you, all.

9 Do you want to take a quick break? We went well past  
10 10:30.

11 [Off the record from 12:04 p.m. until 12:15 p.m.]

12 CHAIRPERSON HEATH: All right. We're going to try to  
13 move through this docket. Yes, we're going to move quickly.  
14 That said, we -- the Board secretary announced earlier that we  
15 had a case that had requested to be postponed. That was  
16 Application No. 19181, application of Department of General  
17 Services. It's been brought to the Board's attention that that  
18 request was not actually for that application, it was for  
19 another DGS application, and that that applicant is actually  
20 here and wants to move forward. Is the applicant in the room?

21 Can you please come forward? And also, is there  
22 someone here from the ANC on this application? Okay. Are you  
23 two the only parties?

24 [No audible response.]

25 CHAIRPERSON HEATH: Okay. If you could please come

1 forward as well? All parties to that case, please come  
2 forward. This is Application No. 19181. We're going a little  
3 bit out of order but we wanted to address this simply because  
4 it was -- there was some miscommunication about whether or not  
5 this was going to go forward today.

6 So, Mr. Moy, do you want to formally call this  
7 application?

8 MR. MOY: Yes. Yes. Thank you, Madam Chair. This  
9 would be Application No. 19181 of the D.C. Department of  
10 General Services.

11 As the Board will recall, this is a request for a  
12 variance from the screening requirements under 2117.12, special  
13 exceptions from the rooftop structure requirements under 411,  
14 and the retaining wall requirements under 413, to renovate an  
15 existing public elementary school in an R-1-B district at 5701  
16 Broad Branch Road Northwest, Square 2012, lot 809.

17 CHAIRPERSON HEATH: Okay. Thank you. Would you all  
18 please introduce yourselves? Make sure your mic is on.

19 MS. BRAYMAN: Hello? Okay. My name is Daisy  
20 Brayman. I'm representing the D.C. Department of General  
21 Services. I'm the Project Manager for the Lafayette Elementary  
22 School Modernization.

23 MS. MAYDAK: My name is Rebecca Maydak. I'm the ANC  
24 Commissioner that includes Lafayette School, 3G-04 is my  
25 single-member district.

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1 MS. CHOI: Hi. My name is Eleanor Choi with Hartman-  
2 Cox Architects, project architect.

3 MR. DAVIDSON: And I'm Graham Davidson with Hartman-  
4 Cox Architects.

5 CHAIRPERSON HEATH: All right. Thank you. So has  
6 this project been posted? Has notice been posted on the site  
7 of this application?

8 MS. BRAYMAN: No, notice was not posted. Our permit  
9 expediter was not able to pick up the postings, however we have  
10 informed the community for a number of months. We've had  
11 multiple community meetings where we've informed and made the  
12 presentation that we submitted to the Board. We also presented  
13 to the ANC twice, both before and after submission to BZA. And  
14 we have two community meetings. We have a community meeting  
15 and an envelope meeting.

16 CHAIRPERSON HEATH: Okay. Providing a notice on the  
17 site of the application and the relief being requested is a  
18 part of our process that we are very strict about. I  
19 appreciate that you've met with the community on a number of  
20 occasions and I would also like to hear from the ANC  
21 representative while you're here. But that is a part of our  
22 process that we're very strict about, and you know, if we allow  
23 one application to proceed without notice of posting it would  
24 open the door for that to happen on any and all applications.  
25 And so it's likely we won't go forward with this case today,

1 but we do want to hear from the ANC since you're here. So if  
2 you want to speak at this time.

3 MS. MAYDAK: Yes. Yes, they did. We've had full  
4 community involvement in this process, and I think if they  
5 posted signs nobody would really notice them anyway with the  
6 construction fence and the other signage around the school.  
7 And the main entrance of the school is now in the back of the  
8 school. So it's a -- and it's a ball field with trailers so  
9 the signage would not probably be that visible. But we had a  
10 full presentation in the fall at the ANC. We had one again in  
11 December, and we had meetings on it, we had envelope meetings  
12 on it. There were community meetings on it. It was well  
13 versed in the community. It's very much supported in the  
14 community because this is done for the advantage of the  
15 community and the community realizes it.

16 These were some of the exceptions that the community  
17 wanted, and made variances. And we fully support this and  
18 we're really -- I'm very sorry that the posting wasn't done but  
19 it's very imperative also that we keep this project going  
20 because we need to get the school done so we're not in those  
21 trailers and postponing the project for another two years. And  
22 the community, it's been on List Serve, it's been on e-mails to  
23 me and back and forth. I mean, I think everybody in the  
24 community who has an interest in the school knows what these  
25 variances are and these requests, and nobody has objected.

1                   CHAIRPERSON HEATH: Okay. Does the Board have any  
2 feeling on this? Go ahead, Mr. May.

3                   MR. MAY: Could I ask a question? I'm sorry. From  
4 DGS, I'm sorry, I missed your name.

5                   MS. BRAYMAN: Daisy.

6                   MR. MAY: So I'm sorry you have to be here at this  
7 moment in time in this succession of bad DGS cases. I mean, we  
8 have just had several poorly planned, poorly executed, poorly  
9 you know, permit expedited cases come through. And I'm, you  
10 know, I'm really -- you know, I appreciate the fact that you're  
11 here and the community is well informed and all of that is very  
12 good, but you're coming -- I mean, this is the fourth or fifth  
13 poorly done DGS case that I've seen. And I'm talking about  
14 over the course of two BZA meetings.

15                   So, and I'm not here every week, right. I'm here  
16 every fifth week. I don't know what's going on while I'm gone.  
17 Maybe I'm just lucky and I get all the DGS cases, I don't  
18 know. But it's bad.

19                   I guess the key question I have for you is, if this  
20 were postponed for a week or whatever it takes to get it  
21 posted, two or three weeks to get it posted, is that actually  
22 going to affect your schedule for executing the project?

23                   MS. BRAYMAN: It would depend on how the zoning  
24 review goes with permitting. So we came here this month in  
25 advance of submitting our building permit application at the

1 end of the month, early February. So our concern is that if we  
2 don't get approval from BZA ahead of submitting our building  
3 permit, that that's going to delay our review by the Zoning  
4 Office. We've already submitted our superstructure permit, and  
5 that alone has taken the Zoning Office over six weeks to  
6 review. And it's been a constant back and forth with the  
7 reviewer on various questions.

8 MR. MAY: Okay. But I mean, there are many -- it's  
9 more than just Zoning who has to review it. Or is it just  
10 Zoning because everything else is being done by a third party?

11 MS. BRAYMAN: Correct.

12 MR. MAY: Okay. And have you gotten through the  
13 third party with everything else?

14 MS. BRAYMAN: Yes.

15 MR. MAY: And so it's just submitting it for a Zoning  
16 approval.

17 MS. BRAYMAN: Yes.

18 MR. MAY: And when are you planning to break ground?

19 MS. BRAYMAN: We've already broken ground. So we're  
20 working on --

21 MR. MAY: So this doesn't affect your --

22 MS. BRAYMAN: We're working on --

23 MR. MAY: -- schedule at all, then?

24 MS. BRAYMAN: We're working under the foundation to  
25 grade permit.

1 MR. MAY: Okay.

2 MS. BRAYMAN: We have a foundation to grade permit.

3 MR. MAY: So, but when -- what's your critical path  
4 for actually getting the rest of your permit done?

5 MS. BRAYMAN: Our building permit?

6 MR. MAY: Yeah.

7 MS. BRAYMAN: We would want to have our building  
8 permit. We were planning on having it by June, which is, you  
9 know, this would give --

10 MR. MAY: Right.

11 MS. BRAYMAN: -- DCRA four months, which is kind of  
12 the standard for review.

13 MR. MAY: Okay.

14 CHAIRPERSON HEATH: So we could certainly put this on  
15 for early February.

16 MR. MAY: I would think so. I mean, I don't know  
17 what it takes to get it posted. I mean, you know, regardless  
18 of the fact that you don't -- we may not think that many people  
19 see it that way --

20 MS. BRAYMAN: Uh-huh.

21 MR. MAY: -- a lot of people do see it that way and  
22 they are not aware when relief is requested. Granted this is  
23 the relief that's being requested here specifically is not the  
24 most substantial in other cases. Compared to other cases, but  
25 still I think I -- you know, I especially appreciate the



1 Chairman's remarks with regard to the importance of posting as  
2 a means of notifying people because a lot of people don't pay  
3 attention to what's going on in ANCs, or they don't have school  
4 aged children so they're not paying attention to what's  
5 happening to the school. And the first time they learn  
6 anything about it is when they walk by and see the sign.

7               So I'm inclined to postpone it. I'm not getting a  
8 very strong signal that this absolutely has to be done in order  
9 to make the permit timing. So I would support some  
10 postponement.

11               CHAIRPERSON HEATH: Okay. So I'm inclined to  
12 postpone this until our first meeting in February, which would  
13 be February 2nd, I believe, Mr. Moy. Is that correct?

14               MR. MOY: That's correct, Madam Chair, February 2nd.

15               CHAIRPERSON HEATH: And does that date look okay?  
16 Relatively okay?

17               MR. MOY: Well, relative, yes. Relative.

18               CHAIRPERSON HEATH: We haven't heard this, Mr. May,  
19 so I don't know if you're here that day. It probably doesn't  
20 matter.

21               MR. MAY: No, I think somebody else can take it up.

22               CHAIRPERSON HEATH: You won't be the lucky one to  
23 have this.

24               MR. MAY: No, I imagine there will be some DGS  
25 applications on my next day anyway.

1           CHAIRPERSON HEATH: Okay. All right. Okay. So we  
2 will continue this until February 2nd, which will allow you  
3 time to post. You can pick up whatever you need from the  
4 office while you're here, that way you don't have to worry  
5 about somebody dropping the ball and not making it down here.  
6 But that would help us maintain our processes, which we feel  
7 are really important in order to make sure that the  
8 neighborhood is properly noticed.

9           MR. HILL: And if we didn't do it also then it would  
10 just be, as the Chairwoman mentioned, it would just open the  
11 door for everyone to argue this point. And it was very nice of  
12 the ANC to come down as well and it's appreciated, and I don't  
13 think you have to come down the next time. So, you know, just  
14 go ahead and get it posted.

15           CHAIRPERSON HEATH: All right. Thank you, all.

16           MS. BRAYMAN: Thank you.

17           MS. MAYDAK: Thank you for the consideration.

18           CHAIRPERSON HEATH: All right. So we will get back  
19 to our order. So our next application is going to be 19151.  
20 After that we will hear the other DGS application, 19157, then  
21 19158, and then 19159, and 18400A. And we have three more  
22 after that that we will hear. So our order is back to where we  
23 began.

24           MR. MOY: Yes. Thank you, Madam Chair. So after  
25 having said that then parties to Application No. 19151 of

1     Saratoga Housing, Inc., as captioned and advertised for  
2     variance relief from the off-street parking requirements under  
3     2101.1, to construct a three-story one-family dwelling in an R-  
4     2 district at 402 Burbank Street Southeast, Square 5398E, E as  
5     in echo, Lot 30.

6             CHAIRPERSON HEATH: Oh, you're a witness. Please be  
7     seated. If you're a party to this case please be seated  
8     wherever you -- yes. And you turned in your witness cards?  
9     Okay. All right. Good.

10            If you all would each, please introduce yourselves?

11            MS. ROBERTS: Good morning. My name is Linda Roberts  
12     and I live at 4314 D Street Southeast, which is across the  
13     street from the new house that they just built. And --

14            CHAIRPERSON HEATH: Just introducing yourself right  
15     now.

16            MS. ROBERTS: Okay. I didn't know.

17            CHAIRPERSON HEATH: Okay. Thank you.

18            MS. SHARK: And my name is Lequilla Shark, and I live  
19     at 4308 D Street Southeast.

20            CHAIRPERSON HEATH: Okay.

21            MR. SECK: Good afternoon, Madam Chair and Board  
22     Members. My name is Oumar Seck, I'm with Saratoga Housing.

23            CHAIRPERSON HEATH: Okay. All right. Thank you. It  
24     appears we have some similar issues on this case. Did you post  
25     notice of this application on the site?

1 MR. SECK: Yes, Madam Chair, we posted it on November  
2 10th.

3 CHAIRPERSON HEATH: Okay.

4 MR. SECK: On both, on Burbank as well as D Street.

5 CHAIRPERSON HEATH: Do we have it? Okay. We missed  
6 it somehow. Let's see. You must have snuck it in late.

7 MR. MOY: It was Exhibit 26, I believe, Madam Chair.

8 CHAIRPERSON HEATH: Got it.

9 MR. MOY: Okay.

10 CHAIRPERSON HEATH: All right. And it also looks  
11 like there's an ANC commissioner e-mail, 29. Okay. All right.  
12 So thank you for getting the posting done and into the record.

13 MR. SECK: You're welcome.

14 CHAIRPERSON HEATH: One more thing. So we previously  
15 didn't have a -- or we still don't have a formal letter from  
16 the ANC, but it looks like you've had correspondence with them.  
17 I'm trying to open the document right now, but it looks like  
18 there's an e-mail exchange. Can you talk about what that is?

19 MR. SECK: Yes, Madam Chair.

20 CHAIRPERSON HEATH: Simply because I can't open the  
21 document yet.

22 MR. SECK: Okay. Yes, Madam Chair. I reached out to  
23 Ms. Ebony Rose-Thompson, who is the commissioner back in  
24 November 3rd, I believe. I have the record here. And we  
25 exchanged e-mails a few times and phone conversations as well

1 regarding getting on the agenda to meet the constituents and  
2 present them this case of variance, request for the parking.  
3 And unfortunately as you see the track record of the e-mails,  
4 the last one she sent me was on December 3rd, after a few  
5 requests that I made to be added on the ANC meeting.

6 She did say I have been out of town for work and have  
7 been climbing up on e-mail hole. I have reached out to the  
8 chair, commissioner, about attendance on December 17th. Once I  
9 hear back I will follow up with you.

10 And since then I never heard back. I replied  
11 thanking her. I called her, and that was the best I could do  
12 before the hearing today.

13 CHAIRPERSON HEATH: Okay. All right. All right.

14 MR. MAY: Just to be clear, so you heard from her on  
15 December 3rd about the potential of it being on a meeting on  
16 December 17th and you never heard anything more from her and  
17 you didn't bother to e-mail her again on that?

18 MR. SECK: Yes, sir, I did e-mail her and it's on the  
19 record I sent, on December 4th I replied that, "Welcome back.  
20 Thanking you for your actions and I will -- "

21 MR. MAY: So December 4th, almost two weeks before  
22 the meeting was the last time you attempted to contact her?

23 MR. SECK: No. The other contacts were phone calls.  
24 I have her phone number. I have spoken to her many times, and  
25 left a few messages after that last e-mail.

1 MR. MAY: Between the 4th and the 17th?

2 MR. SECK: Between the 4th and the 17th, yes.

3 MR. MAY: Yeah. And you never heard anything more?

4 MR. SECK: No.

5 MR. MAY: Okay. All right.

6 CHAIRPERSON HEATH: Was there a meeting on December  
7 17th?

8 MR. SECK: Yes, that's what she stated on here  
9 because they meet, I believe, on the 15th, 17th of each month.  
10 Like the third or second Tuesday, I believe it is, of each  
11 month.

12 CHAIRPERSON HEATH: Okay.

13 MR. SECK: And that was the last one before today's  
14 hearing.

15 CHAIRPERSON HEATH: Okay. Did you attend that one?

16 MR. SECK: No, she did not reply and didn't add me on  
17 to agenda.

18 CHAIRPERSON HEATH: Okay.

19 MR. SECK: But I made several calls to her before.

20 CHAIRPERSON HEATH: Okay. All right.

21 MR. SECK: And if I may add, Madam Chair, I spoke to  
22 her a few times as I said. She saw the building and didn't  
23 have any problem with -- that we provide this house without a  
24 parking space. And she even reiterated to me that most of  
25 those houses on that street park -- don't have a driveway.

1                   CHAIRPERSON HEATH: Okay. All right. Does the Board  
2 have any other questions of the applicant?

3                   Okay. Then normally we would allow you to proceed  
4 with a full presentation, but we've reviewed the information  
5 that's in the record and even that that's just been submitted.  
6 And it doesn't seem that the Board needs any additional  
7 information from you at this time. We may ask questions of you  
8 as we proceed with the rest of the hearing. But if you're okay  
9 with us now talking with Office of Planning about their letter  
10 and comments, we'll proceed on. We may come back to you, as I  
11 said, with additional questions.

12                  MR. SECK: Yes, ma'am. I'm okay with it.

13                  CHAIRPERSON HEATH: Thank you. All right. So, Mr.  
14 Cochran.

15                  MR. COCHRAN: Unless the Board wishes otherwise OP is  
16 happy to stand on the record.

17                  CHAIRPERSON HEATH: Okay. All right. Board, any  
18 questions of Office of Planning? Applicant, any questions of  
19 Office of Planning?

20                  Okay. We also have a letter from the Department of  
21 Transportation indicating that they have no objection to this  
22 request, and normally we would look for some sort of report  
23 from ANC but we understand there has been no formal  
24 presentation at this point, but just communication so far.

25                  We also have two letters of support in the file, and

1 it looks like as very recently we received one in opposition  
2 from Donna Newman. Is that --

3 MS. ROBERTS: That's not -- that's a neighbor.

4 CHAIRPERSON HEATH: Okay. All right. So from  
5 another neighbor. And so at this point I'll ask if either of  
6 you are wishing to speak in support.

7 MS. SHARK: I am in opposition.

8 CHAIRPERSON HEATH: In opposition. Okay. So is  
9 there anyone else here wishing to speak in support of this  
10 application? Anyone in support?

11 Anyone else wishing to speak in opposition please  
12 come forward. Okay. Then we'll allow each of you -- oh,  
13 three. He's got the timer all set. Okay. So you have up to  
14 three minutes. You can use all of it or use less, it's up to  
15 you. But to make your statement in opposition to the  
16 application, make any of your points known. And we'll start  
17 with you. Just repeat your name again.

18 MS. ROBERTS: Okay. My name again is Linda Roberts.

19 CHAIRPERSON HEATH: Thanks.

20 MS. ROBERTS: And my address again is 4314 D Street.

21 The house that form to Burbank is, to me, a driveway would be  
22 a bad decision because the house is at the bottom of a hill.  
23 And at the bottom of that hill there is no stop sign. And  
24 people come down that hill driving, sometimes and don't even --  
25 they don't stop. It's really bad.



1           And before they built the house it was trees there,  
2   so on D Street or Burbank you could see what was approaching  
3   you as you come down. There is plenty of off-street parking,  
4   okay, there. It's real dangerous because as they were building  
5   the house and after they built the house I have seen almost  
6   three accidents where people are coming down right at the  
7   corner and coming on D street, not, you know, pulling in and  
8   the other one is coming down.

9           And right there is where, at the end, is where I was  
10   told by one of the builders that they're going to put the  
11   driveway, close to that end. And that's why I think it's a bad  
12   decision from what I saw.

13           Now years ago there was a -- there has been a couple  
14   of accidents on Burbank and D, coming from that hill. A child  
15   was killed if I'm not mistaken, around 1994, '95, because I was  
16   there. There has been a couple of accidents going into  
17   someone's house on the corner of D and Burbank. So I am asking  
18   the Board to consider that. Thank you.

19           CHAIRPERSON HEATH: Okay. So you're aware that the  
20   applicant is asking for relief from the parking requirements,  
21   correct? They're asking for relief from the requirement to  
22   have one parking space?

23           MR. MAY: Basically, they don't want to build the  
24   driveway.

25           CHAIRPERSON HEATH: Right.

1 MS. ROBERTS: They don't want to?

2 CHAIRPERSON HEATH: Right, they don't.

3 MR. MAY: They do not want to build the driveway,  
4 that's why they're here.

5 CHAIRPERSON HEATH: Right.

6 MR. MAY: If they built the driveway --

7 MS. ROBERTS: Okay.

8 CHAIRPERSON HEATH: Yes, so you were actually in  
9 support --

10 MS. ROBERTS: Okay.

11 CHAIRPERSON HEATH: -- of what he's doing.

12 MS. ROBERTS: Well, then okay.

13 CHAIRPERSON HEATH: Okay.

14 MR. SECK: Correct.

15 MS. ROBERTS: Thank you.

16 MS. SHARK: And I'm in opposition of it because we  
17 already have problems on D Street with parking and she can  
18 verify that. I've been there for 15 years and we have a major  
19 problem on D Street. Really we had a major problem with them  
20 constructing this home because it's going to provide -- it's a  
21 higher dwelling, it's out of the circumference of -- and we  
22 weren't invited to a hearing or anything before they initiated  
23 the building.

24 But as far as this is addressing the parking, for me  
25 being there for 15 years, it's a big problem. Our house is

1 within 200 feet of that home. We're going to be having noise  
2 on our block, and I'm here to oppose it. No off-street  
3 parking, and I believe I have used up our time.

4 CHAIRPERSON HEATH: Okay. So what we heard from the  
5 two of you was very different.

6 MS. SHARK: Yeah.

7 CHAIRPERSON HEATH: And so one is testifying that  
8 there's plenty of parking, the other is saying that there's not  
9 any --

10 MS. SHARK: Do you feel --

11 MS. ROBERTS: No.

12 CHAIRPERSON HEATH: -- parking.

13 MS. ROBERTS: To me, on the street there's plenty of  
14 street parking.

15 CHAIRPERSON HEATH: Right.

16 MS. ROBERTS: If they, whoever moves into the house.

17 MS. SHARK: Right. On --

18 MS. ROBERTS: They can -- they'll park on the street.

19 MS. SHARK: Go ahead.

20 MS. ROBERTS: Matter of fact, right across from where  
21 the house is built.

22 CHAIRPERSON HEATH: Okay.

23 MS. ROBERTS: But to have an off-street parking they  
24 have to cut the ground on that street near the corner.

25 CHAIRPERSON HEATH: Correct. And that's not

1 proposed.

2 MS. SHARK: Okay. But --

3 CHAIRPERSON HEATH: There's no driveway --

4 MS. SHARK: -- on Burbank and D Street, what I'm  
5 saying to you is, there has been a problem with parking.

6 CHAIRPERSON HEATH: So there's no on-street parking?

7 MS. SHARK: It's on-street parking, but what I'm  
8 saying is the way the houses run on Burbank and D Street, we  
9 have two houses, one at 4302, then we have another house on  
10 Burbank. They have to park on D Street and they're utilizing  
11 our parking on our street because the parking is so bad on  
12 Burbank.

13 CHAIRPERSON HEATH: Okay. All right.

14 MS. SHARK: And that's why I oppose more problems  
15 with parking --

16 CHAIRPERSON HEATH: With on-street parking.

17 MS. SHARK: Yes. And we -- and I understand they're  
18 not trying to build a driveway. I understand, it's off-street  
19 parking. That's why I've been here since 9:00 this morning --

20 CHAIRPERSON HEATH: Okay.

21 MS. SHARK: -- to oppose.

22 CHAIRPERSON HEATH: Okay.

23 MS. SHARK: I understand, you know, what they're  
24 proposing.

25 CHAIRPERSON HEATH: Okay. All right. Does the Board

1 have any other questions of either witness?

2           Okay. All right. Normally we would turn back to you  
3 for any closing statement or rebuttal. I don't know that  
4 that's necessary unless you want to speak to some of the points  
5 that the witnesses have brought forward today regarding the  
6 availability of on-street parking. Is there anything -- I  
7 think that's probably the bigger issue that they've brought  
8 forward. Do you want to speak to that or make any other points  
9 before we close?

10           MR. SECK: Just briefly to Ms. -- I missed your name,  
11 I'm sorry.

12           MS. SHARK: My name is Shark. Yes.

13           MR. SECK: Ms. Shark.

14           MS. SHARK: Ms. Shark.

15           MR. SECK: Ms. Shark. That we were approved for a  
16 parking by zoning as far as the plot goes. We had intention to  
17 build one but we cannot because of regulation of setbacks  
18 between the corners. It's dangerous, she mentioned. That's  
19 the reason why we cannot provide parking. But it's not  
20 intentional. That's what I wanted to clarify. Thank you.

21           CHAIRPERSON HEATH: Okay. All right. Thank you,  
22 then. And thank you both for coming down.

23           Is the Board read to deliberate on this? Okay.

24           I understand the points that the witness has made,  
25 but it's clear that there's a danger with providing this off-

1 street parking and it's likely they would not get a curb cut  
2 appeal approved. So I would move that we accept this request  
3 for a variance from off-street parking for Application No.  
4 19151.

5 MR. HILL: I'll second.

6 CHAIRPERSON HEATH: The motion has been made and  
7 seconded. Any further discussion?

8 MR. MAY: No.

9 [Vote taken.]

10 CHAIRPERSON HEATH: The motion carries. Thank you.

11 MR. MOY: Staff would record the vote as four to zero  
12 to one. This is on the motion of Chairperson Heath to approve  
13 the application for the relief requested. Seconded the motion,  
14 Mr. Hinkle. Also in support, Vice Chair Hill and Mr. Peter  
15 May, board seat vacant. Motion carries, Madam Chair.

16 CHAIRPERSON HEATH: Yes. All right. Summary.

17 MR. MOY: Thank you.

18 CHAIRPERSON HEATH: Thank you.

19 MR. SECK: Thank you, Madam Chair. Thank you, Board  
20 Members.

21 CHAIRPERSON HEATH: Thank you. All right. Next  
22 case.

23 MR. MOY: Okay. The next application I believe is  
24 Application No. 19157 of D.C. Department of General Services,  
25 special exception from the roof structure requirements under

1 411.11 to allow roof structures not meeting the setback  
2 requirements under Section 400.7 to permit the installation of  
3 a new roof mounted mechanical equipment to an existing public  
4 high school in an R-3 district at 5200 2nd Street Northwest,  
5 Square 3327, Lot 800.

6 CHAIRPERSON HEATH: Okay. Thank you, Mr. Moy. Would  
7 you please introduce yourself?

8 MS. CHATBURN: Yes. My name is Kendra Chatburn.

9 CHAIRPERSON HEATH: Okay. And you're with?

10 MS. CHATBURN: I am the owner's representative for  
11 Washington Latin Public Charter School, and I've been  
12 authorized by DGS to represent this case.

13 CHAIRPERSON HEATH: Okay. Okay. I dare say after  
14 all of the DGS applicants that we've received recently that Mr.  
15 May has pointed out, this one appears to be pretty straight  
16 forward and clean. It looks like we have everything that we  
17 need, and I don't have any questions on this one. Does the  
18 Board have any questions for the applicant?

19 CHAIRPERSON HEATH: Okay. Then I don't think we're  
20 going to need a full presentation from you, so if you're okay  
21 with us continuing to proceed with the hearing, we'll turn to  
22 Office of Planning.

23 MS. CHATBURN: Sure.

24 CHAIRPERSON HEATH: Okay.

25 MS. ELLIOT: Good afternoon, Madam Chair, Members of

1 the Board. For the record, I'm Brandice Elliott representing  
2 the Office of Planning. I'll go ahead and stand on the record  
3 of our report. We are recommending approval of the requested  
4 special exception.

5 CHAIRPERSON HEATH: Thank you. Board, any questions?  
6 Applicant, any questions of Office of Planning?

7 All right. We also have a letter from DDOT  
8 indicating no objection on this case, and a letter recommending  
9 approval from ANC 4D. Is there anybody here from ANC 4D?

10 All right. We don't have any letters of support or  
11 opposition in the file. Is there anybody here wishing to speak  
12 in support of this application?

13 Anyone wishing to speak in opposition?

14 All right. Then normally we would turn back to you  
15 for rebuttal or closing but there's nothing to rebut or close,  
16 so if you're okay with us closing the Board is ready to  
17 deliberate, I think. All right. So then I'll keep this  
18 simple. I will move that we accept the request for special  
19 exception from the roof structure setback for Application No.  
20 19157.

21 MR. HILL: I'll second.

22 CHAIRPERSON HEATH: The motion has been made and  
23 seconded. Any further discussion?

24 [Vote taken.]

25 CHAIRPERSON HEATH: The motion carries. Thank you.



1           MR. MOY: Staff would record the vote as four to zero  
2 to one. This is on the motion of Chairperson Heath to approve  
3 the application for the relief requested. Seconding the  
4 motion, Vice Chair Hill. Also in support, Mr. Peter May, Mr.  
5 Jeffrey Hinkle, board seat vacant. Motion carries, Madam  
6 Chair.

7           CHAIRPERSON HEATH: Thank you. Summary.

8           MR. MOY: Thank you.

9           CHAIRPERSON HEATH: All right. So you can call our  
10 next application.

11           MR. MOY: Next application I believe is Application  
12 No. 19158 of Tala, in parens, (P2), Ventures, LLC., as  
13 advertised and captioned for a variance relief from the  
14 distance from a residence district requirements under 734.2 and  
15 special exception from the roof delivery service use  
16 requirements under 734 to establish a food delivery service use  
17 in the C-2-A district at 1815 Wisconsin Avenue Northwest,  
18 Square 1299, Lot 327.

19           CHAIRPERSON HEATH: Okay. Thank you. If you would  
20 introduce yourself?

21           MR. TUMMONDS: Sure. Good afternoon, Madam Chair,  
22 Members of the Board. I'm Paul Tummonds with Goulston and  
23 Storrs, and we are able to answer any questions you have and  
24 also rest on the record if you deem appropriate.

25           CHAIRPERSON HEATH: Okay. All right. Does the Board

1 have any questions? I don't have any questions of this  
2 applicant. All right. Okay. So then since you have already  
3 elected to rest on the record we will turn to Office of  
4 Planning.

5 MR. GYOR: Good afternoon, Madam Chair, members of  
6 the Board. Stephen Gyor with the Office of Planning. We rest  
7 on the record. Thank you.

8 CHAIRPERSON HEATH: Thank you. We also have a letter  
9 of no objection from Department of Transportation on this  
10 application and a letter from ANC 2E recommending approval with  
11 conditions. Is there anyone here from ANC 2E on this  
12 application?

13 Okay. It seems as though the applicant has agreed to  
14 the ANC's conditions?

15 MR. TUMMONDS: That's correct.

16 CHAIRPERSON HEATH: Okay. All right. And so we can  
17 include them as a part of the order. All right.

18 So then is there anyone here wishing to speak in  
19 support of this application? Anyone in support?

20 Anyone wishing to speak in opposition? So no support  
21 or opposition.

22 Then we would turn back to you if there's anything  
23 additional you want to add, Mr. Tummonds.

24 MR. TUMMONDS: No.

25 CHAIRPERSON HEATH: Okay. Then I will move that we

1 accept the request for variance and special exception on this  
2 application with conditions. And I'll just read those for the  
3 record.

4           The first is that the hours of operations shall not  
5 exceed 10:00 a.m. to 2:00 a.m. seven days a week, but carryout  
6 service shall be permitted after 11:00 p.m. The second is that  
7 individual slices of pizza shall only be sold from the premises  
8 between the hours of 10:00 a.m. and 2:00 p.m. The third is  
9 that no more than six seats shall be provided in the fast food  
10 delivery service restaurant. The fourth is that delivery  
11 service shall be limited to properties that are located within  
12 a two-mile radius of the fast food delivery service restaurant.

13   The fifth is that the applicant or any subsequent owner or  
14 operator of the property shall use personal vehicles, mopeds,  
15 electric and gas powered and bicycles for deliveries. The  
16 sixth is that the applicant or any subsequent owner or operator  
17 of the property shall utilize vent hoods that exhaust through  
18 the roof using best available technology to mitigate any  
19 cooking odors. And the seventh and last is that the applicant  
20 or any subsequent owner or operator of the property shall  
21 closely monitor refuse and recycling collection in order to  
22 mitigate any potential negative impacts on neighboring  
23 properties and the general public.

24           So that's the motion.

25           MR. HILL: I second the motion.

1 CHAIRPERSON HEATH: The motion has been made and  
2 seconded. Any further discussion?

3 [Vote taken.]

4 CHAIRPERSON HEATH: So, the motion carries. Thank  
5 you.

6 MR. MOY: Staff would record the vote as four to zero  
7 to one. This is on the motion of Chairperson Heath to approve  
8 the application for the relief requested with the seven  
9 conditions that she has cited. Seconding the motion Vice Chair  
10 Hill. Also in support, Mr. Peter May, Mr. Jeffrey Hinkle, and  
11 we have a vacant seat. Motion carries, Madam Chair.

12 CHAIRPERSON HEATH: All right. Thank you. Summary.

13 MR. MOY: Thank you.

14 CHAIRPERSON HEATH: All right. Our next application.

15 MR. MOY: That would be, I believe, Application No.  
16 19159 of Edward and Jessica Long, as captioned and advertised  
17 for a special exception relief under Section 223, not meeting  
18 the lot occupancy requirements, open court requirements, and  
19 the nonconforming structure requirements, and special exception  
20 form the height requirements under 400.23, this is to build a  
21 third floor addition with the roof deck to an existing one-  
22 family dwelling in an R-4 district at 650 F Street Northeast,  
23 Square 816, Lot 7.

24 CHAIRPERSON HEATH: Okay. Thank you. Would you  
25 please introduce yourself?

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1 MS. FOWLER: Good afternoon, I'm Jennifer Fowler.  
2 I'm the architect on the case.

3 MS. LONG: Hi. I'm Jessica Long and I'm one of the  
4 owners.

5 CHAIRPERSON HEATH: Okay. Thank you. So I didn't  
6 call you forward this morning because I understand that the  
7 party status request previously on this application has been  
8 withdrawn.

9 MS. FOWLER: That's correct. I'm not sure if it's  
10 been formally withdrawn but we do have an e-mail from the  
11 homeowners across the street that they are --

12 CHAIRPERSON HEATH: Okay.

13 MS. FOWLER: -- not opposing anymore.

14 CHAIRPERSON HEATH: Okay. And they're not here  
15 today?

16 MS. FOWLER: Correct.

17 CHAIRPERSON HEATH: Okay.

18 MS. FOWLER: Yeah.

19 CHAIRPERSON HEATH: All right. So we appreciate the  
20 work that you did to come to some agreement.

21 MS. FOWLER: Thank you.

22 CHAIRPERSON HEATH: It's always better when you can  
23 come to some agreement without us having to --

24 MS. FOWLER: Yes. We agree too.

25 CHAIRPERSON HEATH: -- decide for you. Okay. So I

1 think -- and it looks like you've gone through several  
2 revisions, even before working with the neighbor across the  
3 street to minimum the visibility of the addition. Okay. All  
4 right.

5 Does the Board have any questions of the applicant?

6 MR. MAY: What did it take to have the last -- or the  
7 party in opposition to withdraw? I mean, what satisfied their  
8 concern?

9 MS. FOWLER: So we learned of their opposition last  
10 week when we checked the file and saw that they had concerns  
11 about privacy and sky view and those kinds of things. And so  
12 what we did is we reached out to them immediately and sent them  
13 the latest plans.

14 MR. MAY: Uh-huh.

15 MS. FOWLER: And the sun study and the mock up views  
16 from the street. So I think that they had been looking at the  
17 original filing, even though we had uploaded the new documents.

18 MR. MAY: Uh-huh.

19 MS. FOWLER: So they took a look at that and they had  
20 their architect look at it and they said that they were okay.  
21 They still had some slight concerns about privacy but they felt  
22 like we had gone a long way to ease their concerns. And they  
23 also acknowledged that we went through the ANC meeting and  
24 everybody there was okay with the project as well.

25 MR. MAY: Okay. I do have a couple questions about

1 the design. Bear with me a second while I pull up the plans;  
2 the revised plans.

3 So the -- excuse me. There is a roof deck that's --  
4 I mean, if you look at this addition as in thirds, basically,  
5 the roof deck is in the middle in the rear third. Is that  
6 right?

7 MS. FOWLER: That's correct. There's a small patio  
8 at the same level as the bedroom --

9 MR. MAY: Right.

10 MS. FOWLER: -- on the front of the house where we've  
11 set back.

12 MR. MAY: Right.

13 MS. FOWLER: That's going to be hidden by the  
14 existing mansard that we're keeping.

15 MR. MAY: Okay.

16 MS. FOWLER: And then there's the roof deck on the  
17 middle portion and the rear portion as well.

18 MR. MAY: All right. And so effectively is it a one  
19 to one setback from the top of the roof at the front of the  
20 building? It's hard to call it a cornice line, but it's above  
21 the actual cornice where the roof is.

22 MS. FOWLER: It's about -- so it's seven feet back  
23 from the face of the building to the start of the addition.

24 MR. MAY: Yeah.

25 MS. FOWLER: Just over seven feet. And it's a

1 little --

2 MR. MAY: But you've got three feet of stuff.

3 MS. FOWLER: Yeah. Like -- yeah, exactly.

4 MR. MAY: Of additional --

5 MS. FOWLER: The thickness of the mansard roof and  
6 the dormer.

7 MR. MAY: Yeah.

8 MS. FOWLER: The patio is about five feet deep.

9 MR. MAY: Okay. And on one side it looks like  
10 there's actually a parapet wall and on the other side it's an  
11 open rail. And then on the front it's a glass rail? Is that -  
12 - do I understand it all?

13 MS. FOWLER: Yes. The glass rail was kind of in  
14 response to ANC concerns about the visibility of the railings.  
15 So the idea was kind of something a more of a transparent  
16 railing would minimize the impact.

17 MR. MAY: Uh-huh.

18 MS. FOWLER: Along the party wall, typically the  
19 permit office requires some kind of fire rated structure. You  
20 know, like a parapet wall or a fire rated railing. So we  
21 extended the brick party wall up on that side.

22 MR. MAY: Okay. Typically, or does? Typically  
23 requires or does require?

24 MS. FOWLER: Typically. I mean, it varies by  
25 project, but --



1 MR. MAY: I mean it just -- I mean, the problem is  
2 that it makes it look more massive --

3 MS. FOWLER: Yeah. Right.

4 MR. MAY: -- from that angle. I mean, not that it's  
5 a huge issue. If the drawing in 86 is correct the -- is it the  
6 immediate adjacent property is actually longer, right?

7 MS. FOWLER: Yes, that's correct. Yeah.

8 MR. MAY: Okay.

9 MS. FOWLER: If you see the view, the mock up views,  
10 you can see that that wall is not visible from the street.

11 MR. MAY: Right.

12 MS. FOWLER: If you kind of look from up and down the  
13 street across -- on the opposite sidewalk.

14 MR. MAY: Right. And --

15 MS. FOWLER: And the house at 652 is also taller.

16 MR. MAY: Yeah.

17 MS. FOWLER: Sorry to interrupt.

18 MR. MAY: Taller than -- excuse me. Taller than your  
19 project, the building of your project, existing building, but  
20 not taller than what you're proposing.

21 MS. FOWLER: Correct. Correct.

22 MR. MAY: Okay. I'm not sure that that, as this is  
23 proposed, it complies with the new penthouse regulations which  
24 talks to lots of things about rooftop structures, including  
25 setbacks for rails and things like that. But those only went

1 into effect on Friday and your application was filed before  
2 that. So I assume it wouldn't have to. But it just, you know,  
3 note for your interest since you do a number of projects like  
4 this. I don't know if it does or it doesn't. You know,  
5 between the Zoning Regulations rewrite, the penthouse  
6 regulations, the pop up regulations --

7 MS. FOWLER: Right.

8 MR. MAY: -- I'm confused. I'd have to look it up  
9 myself. So, but it's worth looking at.

10 I would also note that that -- and this is  
11 probably -- it's too bad the ANC isn't here, but when I see  
12 Commissioner Eckenwiler next I'll tell him that a glass rail is  
13 generally not less visible than a normal rail, that it actually  
14 can be more visible. At least that's my opinion. But I think  
15 that's a fairly common opinion.

16 It's also a pain in the neck to maintain so I'm sorry  
17 for you that you have to maintain a glass rail like this. So I  
18 mean, we in the Park Service where we build many buildings and  
19 have many rails, we never build anything with a glass rail. It  
20 just is too much of a maintenance headache.

21 Anyway, that's it for my comments.

22 MS. FOWLER: We did --

23 MR. MAY: I think the chairman might agree with me on  
24 the glass rail thing.

25 CHAIRPERSON HEATH: Yeah. The maintenance of the

1 glass rail is certainly not going to be fun for the property  
2 owner.

3 MS. FOWLER: We did agree to a nonreflective coating  
4 on the glass -- the railings and the glass as well.

5 MR. MAY: Yeah.

6 MS. FOWLER: As per request of the ANC.

7 MR. MAY: Yeah, it's still going to wind up being  
8 visible, I think. So, and the nonreflective coating doesn't  
9 help on the maintenance issues. But again, that's the owner's  
10 problem. Sorry.

11 CHAIRPERSON HEATH: All right. Okay. Any other  
12 questions, Board? All right.

13 Then Ms. Fowler, I don't think we need to hear a full  
14 presentation from you. I think we've heard what we need to at  
15 this point.

16 MS. FOWLER: Okay.

17 CHAIRPERSON HEATH: And if you're okay with us  
18 proceeding we'll turn to Office of Planning.

19 MS. FOWLER: I'm fine with that. Thank you.

20 CHAIRPERSON HEATH: Okay. Thanks.

21 MS. BROWN-ROBERTS: Good afternoon, Madam Chairman  
22 and Members of the BZA. I will stand on the record and  
23 recommend approval for the special exceptions that were  
24 requested and I'm available for questions. Thanks.

25 CHAIRPERSON HEATH: Thank you. Any questions Office

1 of Planning, Board, or applicant, any questions of Office of  
2 Planning?

3 MS. FOWLER: Thank you.

4 CHAIRPERSON HEATH: Okay. Thanks. We also have a  
5 letter of no objection from Department of Transportation on  
6 this. And as I said, we did have the party status request, but  
7 that has since been withdrawn. And we have a notice from ANC  
8 6C stating that they approve the project based on the most  
9 recent revisions. Is there anyone here from ANC 6C? All  
10 right.

11 Is there anyone here wishing to speak in support of  
12 this application? Anyone in support? Anyone in opposition?

13 No support or opposition. Then we would normally  
14 turn back to you for any closing statement that you might want  
15 to make. Otherwise if there's nothing then we'll close the  
16 hearing.

17 MS. FOWLER: Thank you. We don't have anything else  
18 to add.

19 CHAIRPERSON HEATH: Okay.

20 MS. FOWLER: Thank you so much for your time.

21 CHAIRPERSON HEATH: Sure. Thank you. All right.  
22 Thank you for your work with the neighbors and the community in  
23 general. It looks like it's taken this project a long way  
24 towards getting approved by a number of agencies, including the  
25 OP and ANC 6C.

1           So and I have no issues with this based on the new  
2 information, so I will make a motion that we accept the request  
3 for special exception relief for Application No. 19159.

4           MR. HILL: I second.

5           CHAIRPERSON HEATH: The motion has been made and  
6 seconded. Any further discussion?

7           [Vote taken.]

8           CHAIRPERSON HEATH: So the motion carries. Thank  
9 you.

10          MR. MOY: Staff would record the vote as four to zero  
11 to one, this is on the motion of Chairperson Heath to approve  
12 the application for the relief requested. Seconding the  
13 motion, Vice Chair Hill. Also in support, Mr. Peter May, Mr.  
14 Jeffrey Hinkle, vacant seat. Motion carries, Madam Chair.

15          CHAIRPERSON HEATH: Thank you. Summary.

16          MR. MOY: Thank you. The next application, parties  
17 to Application No. 18400B, B as in Bravo. This application has  
18 been amended, Madam Chair, but I only read for the record the  
19 previous notice and it was for variances from lot occupancy,  
20 off-site -- or rather off-street parking requirements and  
21 loading requirements, and a special exception from the private  
22 school requirements under 206 to increase the enrollment cap to  
23 350 students to 72 staff and construct an addition to an  
24 existing school building in an R-1-B and R-5-A district at 6045  
25 16th Street Northwest, Square 2726, Lots 825 and 831. Also I

1 believe the amendment was to include special exception from  
2 Section 411.11 and 411.3, and there is a revised self-  
3 certification under Exhibit 26.

4 CHAIRPERSON HEATH: Okay.

5 MR. MOY: To that affect.

6 CHAIRPERSON HEATH: All right. Thank you. Would you  
7 all please introduce yourselves?

8 MR. SULLIVAN: Sure. Thank you. Good afternoon,  
9 Madam Chair, Members of the Board. My name is Marty Sullivan  
10 with the law firm of Sullivan and Barros, here on behalf of the  
11 applicant.

12 MS. GREENFELD: My name is Helaine Greenfeld. I'm a  
13 Trustee and past President of the Jewish Primary Day School.

14 MR. WHITTMAN: My name is John Whittman. I am with  
15 Geier Brown Renfrow Architects.

16 CHAIRPERSON HEATH: Make sure your mic is on.

17 MR. WILSON: My name is Dave Wilson. I am the ANC  
18 4A-07 in which it's my single-member district and that's where  
19 the school's northern campus is located.

20 CHAIRPERSON HEATH: Okay. Thank you.

21 MS. WHITE: Good afternoon, Nicole White, Principal  
22 with Symmetra Design Transportation Planning.

23 CHAIRPERSON HEATH: Okay. All right. So it looks  
24 like you've done some pretty significant work with Department  
25 of Transportation. And they have a number of conditions that

1 they've listed as a part of their letter of approval, or letter  
2 of no objection as they put it. You're nodding your head. Are  
3 you in agreement with those conditions?

4 MR. SULLIVAN: We're in agreement with all of them.  
5 There was some discussion before about the bicycles and I think  
6 Nicole can speak to that.

7 MS. WHITE: Yes. There was one agreement -- there  
8 was one condition that DDOT had about 10 long-term bicycle  
9 parking spaces, and so we just spoke in the hallway with a DDOT  
10 case manager and came to consensus on providing six indoor  
11 long-term bicycle parking spaces.

12 CHAIRPERSON HEATH: Okay. In lieu of the 10?

13 MS. WHITE: Yes.

14 CHAIRPERSON HEATH: Outdoor. Okay.

15 MS. WHITE: In lieu of the 10 indoor.

16 CHAIRPERSON HEATH: Oh, it was 10 indoor. Okay.

17 MS. WHITE: Yes, and so we would provide six indoor.

18 CHAIRPERSON HEATH: Okay. All right. Okay. Got it.

19 All right. Okay. Does the Board have any other questions of  
20 this applicant? All right.

21 Okay. So it appears that your application is  
22 complete based on the information that we have in the record.  
23 So if you're fine with us proceeding without hearing a full  
24 presentation on this we will --

25 MR. SULLIVAN: I'm happy to stand on the record.

1 Thank you.

2 CHAIRPERSON HEATH: Okay. So Office of Planning?

3 MR. MORDFIN: Good afternoon. I'm Stephen Mordfin,  
4 and the Office of Planning supports this application, the  
5 variances and the special exceptions as requested, and stands  
6 on the record. And also, just I'd like to add, DDOT is not  
7 here at the moment but I was a part of the discussions with  
8 DDOT where they agreed that six indoor space -- bicycle parking  
9 spaces would be adequate.

10 CHAIRPERSON HEATH: Okay. All right. And you also  
11 offered conditions?

12 MR. MORDFIN: Yes, we offered conditions. The  
13 conditions that we offered were that the enrollment not exceed  
14 350, that the faculty and staff combined shall not exceed 72,  
15 that the applicant shall implement the recommendations  
16 contained within the transportation impact study submitted by  
17 the applicant, and that a minimum of 25 off-street parking --  
18 off-site parking spaces be provided for faculty and staff,  
19 which would enable those employees to carpool to that off-site  
20 location and then carpool to the school.

21 And then lastly that minimum of 16 bicycle racks for  
22 each bike, students, faculty, and staff, and shower facilities  
23 for each by faculty and staff that bike to work be made  
24 available.

25 CHAIRPERSON HEATH: Okay. Thank you. And the



1 applicant is okay with those conditions? You've agreed to  
2 those?

3 MR. SULLIVAN: Yes, we do. I just, I wasn't clear if  
4 the 16 bicycle racks coincided with DDOT's recommendation or  
5 not. But if we could just refer to DDOT's recommendation on  
6 that point since we know that we have an agreement on that.

7 MS. WHITE: Yeah, that makes sense unless OP has --

8 MR. MORDFIN: No, that makes -- I'm in agreement with  
9 that.

10 MR. SULLIVAN: Thank you.

11 CHAIRPERSON HEATH: So you're accepting the six  
12 rather than the 16?

13 MR. MORDFIN: Well, there were supposed to be 10  
14 indoor bicycle parking spaces that DDOT agreed could become six  
15 indoor bicycle parking spaces. So it's a reduction of four.

16 CHAIRPERSON HEATH: Okay. All right.

17 MR. SULLIVAN: Madam Chair, there's still outdoor  
18 parking --

19 CHAIRPERSON HEATH: Bicycle.

20 MR. SULLIVAN: Bike racks.

21 CHAIRPERSON HEATH: Okay.

22 MR. SULLIVAN: As well.

23 CHAIRPERSON HEATH: Okay. All right. Okay. Board,  
24 any other questions of Office of Planning?

25 Does the applicant have any other questions of Office

1 of Planning? Okay.

2 MR. SULLIVAN: No, we don't. Thank you.

3 CHAIRPERSON HEATH: It seems as though you all had  
4 conversations with DDOT earlier today. I don't know if there  
5 is anyone still here from DDOT wishing to speak on this  
6 application. Okay. But we do have their letter of on  
7 objection.

8 They've also recommended that you continue to work  
9 with them to amend your performance monitoring plan and  
10 continue to work further on traffic management issues. So I'll  
11 -- I see you nodding your head so I assume you agree to --

12 MR. SULLIVAN: Yes, we agree to that as well

13 CHAIRPERSON HEATH: -- continuing to work with them.

14 MR. SULLIVAN: Yes.

15 CHAIRPERSON HEATH: Okay. All right. We do have  
16 someone here from the ANC. We also have a letter of approval  
17 from ANC 4A. But we'll -- if you have anything you'd like to  
18 add as the single-member district chair you can --

19 MR. WILSON: No, we --

20 CHAIRPERSON HEATH: -- at this time.

21 MR. WILSON: We've submitted Exhibit 33, which  
22 indicates we're in agreement that they are doing all the right  
23 things to minimum the impact of traffic on the neighborhood.  
24 And we're particularly impressed with the fact that they got  
25 off-street -- off-site parking outside the District, and that

1 they also had done a subsidization of the bus transportation  
2 for the kids, 75 percent of the kids, using the north campus or  
3 getting subsidized bus -- we're impressed with both of those  
4 matters.

5 CHAIRPERSON HEATH: Okay. All right. Thank you.  
6 And thank you for coming down.

7 MR. WILSON: You're welcome.

8 CHAIRPERSON HEATH: All right. Do you have a  
9 question?

10 MR. HILL: No, I was just going to say, I thank you  
11 for coming down. I mean, it's not like the ANC is going to  
12 come down for all of the different things. And to stay here  
13 all day, that's nice of you to support the community.

14 MR. WILSON: Thank you.

15 CHAIRPERSON HEATH: Is there anyone here wishing to  
16 speak in support of this application?

17 We do have a letter in support from the 16th Street  
18 Heights Civic Association, as well as from the Shepherd Park  
19 Citizen's Association. Is there anyone wishing to speak in  
20 opposition to this application? Anyone in opposition?

21 All right. Then we'll turn back to the applicant for  
22 any closing.

23 MR. SULLIVAN: Nothing further. Thank you.

24 CHAIRPERSON HEATH: Okay. All right. Is the Board  
25 read to deliberate on this? Okay. Anyone want to make a

1 motion?

2 MR. MAY: I would make a motion that we approve  
3 variances for lot occupancy requirements under Section 403,  
4 off-street parking requirements under Section 2101.1, and the  
5 loading requirements under 2201.1, and a special exception for  
6 the private school requirements under Section 206, to increase  
7 the enrollment cap to 350 students and 72 staff, and to  
8 construct an addition to the existing school building in the R-  
9 1-B and R-5-A districts at premises 6045 16th Street Northwest,  
10 with the conditions that we've already discussed from DDOT and  
11 the Office of Planning.

12 CHAIRPERSON HEATH: Okay.

13 MR. HILL: I second.

14 CHAIRPERSON HEATH: All right. So the motion has  
15 been made and seconded. Any further discussion?

16 MR. MAY: Yeah, I --

17 CHAIRPERSON HEATH: I think we have one more thing --

18 MR. MAY: I'm sorry. I just want to -- I mean --

19 CHAIRPERSON HEATH: One more thing to add to the --

20 MR. MAY: The roof structures.

21 CHAIRPERSON HEATH: Right. Exactly.

22 MR. MAY: Okay. Thank you. I was just reading off  
23 of the report that I have. So --

24 CHAIRPERSON HEATH: Right. So --

25 MR. MAY: And roof structure relief.

1 CHAIRPERSON HEATH: Perfect. Okay.

2 MR. MAY: So, and I also do want to say, it's kind of  
3 unusual to get an enrollment cap change come before the BZA  
4 without people raising concerns, either from the ANC or from  
5 immediate neighbors or what have you. So whatever you've been  
6 -- you know, you did to get make this happen, I think you've  
7 done very well and it's commendable.

8 CHAIRPERSON HEATH: All right. So I guess that was  
9 further discussion. All right.

10 [Vote taken.]

11 CHAIRPERSON HEATH: All right. So the motion  
12 carries. Thank you.

13 MR. MOY: Staff would record the vote as four to zero  
14 to one, this is on the motion of Mr. Peter May for the relief  
15 requested and for the roof top structure requirements as well,  
16 and the five conditions as cited by the Board. Seconding the  
17 motion Vice Chair Hill. Also in support, Mr. Hinkle and  
18 Chairperson Heath. And we have a board seat vacant. Motion  
19 carries, Madam Chair.

20 MR. SULLIVAN: Madam Chair, if I -- I'm sorry, if I  
21 could clarify. Is that going to be a summary order?

22 CHAIRPERSON HEATH: Yes, summary.

23 [Pause.]

24 CHAIRPERSON HEATH: We'll keep going.

25 MR. MOY: Okay. That's what I -- that's what I was

1 hoping, actually.

2           To the table, then, parties to Application No. 19125  
3 of Sanford, in quotation marks, "Sandy", and I believe it's  
4 pronounced Roskes, but I'm not sure. R-O-S-K-E-S. Captioned  
5 and advertised for a special exception relief under Section  
6 223, not meeting the open court requirements, nonconforming  
7 structure requirements, and a special exception from the  
8 minimum pervious surface requirements under 412.3. This is to  
9 permit construction of a one-story rear addition to an existing  
10 one-family dwelling in an R-1-B district at 3008 Ordway Street  
11 Northwest, Square 2071, Lot 7.

12           CHAIRPERSON HEATH: All right. Can you all please  
13 introduce yourselves?

14           MS. AFZAL: My name is Leila Afzal. I live at 3006  
15 Ordway Street and we are the attached neighbor just east of the  
16 Roskes.

17           MR. HEALY: I'm John Healy. I live at 2931 Ordway  
18 Street Northwest which is one block down from the house.

19           MR. ROSKES: Sandy Roskes. I'm the applicant.

20           MR. HEISEY: Joel Heisey. I'm the architect for the  
21 applicant.

22           CHAIRPERSON HEATH: All right. Give me one second.  
23 Just --

24           MS. AFZAL: I don't know if it's appropriate to ask,  
25 but can I have a clarification of the application at -- I must

1 have misheard. I understand that part of the application is  
2 also for a special exception for the five -- of the eight-yard  
3 setback. I don't think I heard you say that. Maybe I missed  
4 it.

5 MR. MOY: Well, then perhaps if we could have the  
6 applicant --

7 CHAIRPERSON HEATH: Yeah. Right.

8 MR. MOY: -- restate the relief that you're asking  
9 for, because I read what was -- had been advertised and  
10 publically noticed.

11 MR. HEISEY: Yeah. Speaking with Office of Planning,  
12 it's an open court exception, not a side yard.

13 CHAIRPERSON HEATH: Okay.

14 MS. AFZAL: Except that this is R-1-B and it's a  
15 nonconforming building and as a result it needs to have an  
16 eight-yard side yard setback or else there needs to be a  
17 special exception, and that's what the original application was  
18 for.

19 MR. HEISEY: And the special exception as determined  
20 that was needed by Office of Planning was that it is an open  
21 court and not a side yard. And it still requires the special  
22 exception because the side yard requires six feet and we have  
23 five feet.

24 MS. AFZAL: Eight feet.

25 MR. HEISEY: There's an open court exception, not a

1 side yard.

2 CHAIRPERSON HEATH: Okay.

3 MR. HEISEY: As determined by Office of Planning.

4 CHAIRPERSON HEATH: Okay. If you could --

5 MR. HEISEY: And, actually, the Zoning  
6 Administrator --

7 MS. AFZAL: I wasn't even noticed of that.

8 MR. HEISEY: We have a reference letter from the  
9 Zoning Administrator, and that was his determination as well.

10 CHAIRPERSON HEATH: Okay. Now you -- it doesn't look  
11 like this relief has changed, at least recently. And so all  
12 parties should have been noticed of this relief and you have an  
13 affidavit of posting that should have listed this relief. So  
14 at least according to our file it hasn't changed recently.  
15 Usually we see that there has been a revision made once an  
16 application is filed and --

17 MS. AFZAL: I have received absolutely nothing.  
18 There was a posting with the number and I went on the website  
19 and it's not updated. I think there is -- it was hard to read.  
20 And what I saw was the old application, which was a different  
21 design. I'm just a little confused because it had been -- the  
22 way I read the Zoning Regulations, and I'll have to talk to  
23 Matt LeGrant and find out why, with a nonconforming building  
24 you're supposed to conform with all the zoning requirements of  
25 that zone. One of the zoning requirements is an eight-foot



1 side yard setback.

2 I'm being hyper technical here because we've actually  
3 come to an agreement with our neighbor. But it seems to me  
4 it's a bad precedent to set to vitiate the side yard setback  
5 requirements for a nonconforming building. I just, it's --

6 CHAIRPERSON HEATH: If we could --

7 MS. AFZAL: It's a little surprising to me.

8 CHAIRPERSON HEATH: If we could hold that, then, this  
9 is something that has been -- the relief has been clarified, it  
10 seems, between the applicant and Office of Planning.

11 MS. AFZAL: Uh-huh.

12 CHAIRPERSON HEATH: So we can -- Office of Planning  
13 is here. We can talk about that --

14 MS. AFZAL: Okay.

15 CHAIRPERSON HEATH: -- a little further into the  
16 hearing. All right. All right. So does the Board have any  
17 questions of the applicant on this? I think it's been made  
18 clear what the relief is that's being requested.

19 So I don't think there's a need for you to make a  
20 full presentation before the Board. We may have some  
21 questions, at which time you may need to reference the drawings  
22 that you've put on the screen. But until such time if you're  
23 okay with us proceeding we can speak to Office of Planning now.

24 MR. HEISEY: Just for clarification, the relief that  
25 we are requesting is the side yard on the west side for five

1 feet, which actually is conformity with existing nonconforming  
2 buildings. We're allowed to do that.

3 As I said, previously we had considered it as a side  
4 yard but Office of Planning and the Zoning Administrator had  
5 determined that it's an open court, not a side yard. So that is  
6 the variance requested. And before of the percentage of the  
7 lot occupancy we need permeable area relief.

8 CHAIRPERSON HEATH: Okay.

9 MR. HEISEY: Those are the only ones there, actually,  
10 very small. It's a very small building.

11 CHAIRPERSON HEATH: Okay.

12 MR. MAY: And to be perfectly clear, I mean, what was  
13 stated by the Zoning Administrator and repeated by the Office  
14 of Planning is that you're extending a nonconforming side yard.  
15 So I mean, side yard is in there.

16 MS. AFZAL: On the other side.

17 MR. MAY: The building is nonconforming for a number  
18 of reasons.

19 MS. AFZAL: Right. Right.

20 MR. MAY: And a great number of reasons.

21 MS. AFZAL: Right.

22 MR. MAY: It doesn't mention -- go into all of those.

23 MS. AFZAL: Right.

24 MR. MAY: Yeah.

25 CHAIRPERSON HEATH: Okay.

1           MR. ROSKES: Is it okay if I just make a couple quick  
2 comments before presenting?

3           CHAIRPERSON HEATH: Sure.

4           MR. ROSKES: As the applicant. Thanks.

5           So yeah, I think the application is complete so I'm  
6 not going to -- I don't think we need to make a full  
7 presentation. Just wanted to comment, the Chair and the Board  
8 has mentioned several times today, requesting that parties try  
9 to resolve issues amongst themselves before coming to the Board  
10 and I'd just point out that we had gone through pretty  
11 extensive, I would say painstaking process to address issues  
12 with the neighbors, including my next door neighbor, Leila, Ms.  
13 Afzal here. And the result of that with our immediate neighbor  
14 is a pretty extensive agreement written and agreed -- signed as  
15 a covenant on the property stipulating what kind of limitations  
16 we're going to maintain on the addition.

17           In addition to that we've had a pretty extensive  
18 iterative process with HPRB who had made requests on the  
19 design. As a result of that we actually had to go back to an  
20 original agreement with our neighbor and reopen several issues  
21 and we went through that process as well. Also very open with  
22 the ANC.

23           And the result of all this is we have agreement from  
24 our immediate neighbor on the addition as well as letters of  
25 support from the other immediate neighbor on the west side of

1 the property as well as our immediate neighbor across the alley  
2 from the property.

3 I think the -- as well as the ANC; the ANC and HPRB.

4 Now we have approval from the Board to go back to HPO and just  
5 resolve a few design details which we're in the process of  
6 doing now. And I think the matters before the Board are pretty  
7 clear in terms of which exceptions we are seeking.

8 CHAIRPERSON HEATH: Okay. All right. Thank you.  
9 Board, any other questions?

10 So then we'll turn to Office of Planning for  
11 additional comments.

12 MS. BROWN-ROBERTS: Thank you, Madam Chair. And I'll  
13 just address the issue concerned, the side yard. As the  
14 architect said, on the west side there is a side yard. It's  
15 open the full length of the property on that side, and  
16 therefore that is considered a side yard. And what they're  
17 doing is extending the five-foot side yard. And so that comes  
18 under 2001.3.

19 On the east side the building is currently  
20 effectively a duplex, and so it doesn't have a side yard on  
21 that side. What the addition is doing is creating, both  
22 additions are creating an open court. And so the -- and so  
23 that comes under Section 406.1, which requires a nine-foot  
24 minimum and what they're providing is five feet, and that's  
25 what they've applied for. And that has been our interpretation

1 and also the interpretation and consultation with the Zoning  
2 Administrator. That area is not a side yard, it's a court.

3 We have reviewed the application for both special  
4 exceptions. We have also consulted with -- this property has  
5 gone through extensive review by Historic Preservation, and we  
6 have consulted with them regarding design and the size of the  
7 addition. And feels that the request and the design and the  
8 setbacks do meet the -- do meet the standards for the special  
9 exception and therefore we would recommend approval. Thank  
10 you, Mr. Chairman -- Ms. Chairman.

11 CHAIRPERSON HEATH: Thank you. All right. Board,  
12 any questions of Office of Planning?

13 Does the applicant have any questions of Office of  
14 Planning?

15 MR. HEISEY: No.

16 CHAIRPERSON HEATH: Okay. All right. All right.  
17 Then we also have a letter of no objection from DDOT and as you  
18 noted, a letter of approval from ANC 3C. Is there anybody here  
19 from ANC 3C?

20 All right. And we do have a number of letters of  
21 support from your neighbors. I appreciate that you've spent a  
22 lot of time working with them to find a solution that is  
23 pleasing to everyone in your neighbor, particularly the  
24 surrounding neighbors.

25 Are you all here -- you're here to speak in support?

1 MS. AFZAL: I'm here to speak on my behalf to talk  
2 about the covenant and what the covenant requires of us and  
3 what it requires of Bonnie and Sandy.

4 CHAIRPERSON HEATH: Okay. Then normally at this time  
5 we'd ask for anybody who wants to speak in support or  
6 opposition and we'll let you both speak now. We give witnesses  
7 three minutes, so --

8 MS. AFZAL: Well, here is my request. And not to  
9 make this day any longer than it's been. But I would like to  
10 ask for party status. I do understand that --

11 CHAIRPERSON HEATH: It's --

12 MS. AFZAL: -- I didn't apply in time --

13 CHAIRPERSON HEATH: Right.

14 MS. AFZAL: -- and I'm asking your indulgence for a  
15 waiver. And not because I have any questions or that I want to  
16 delay this any longer. What I would like is your consideration  
17 to give my statement great weight. I think it's an important  
18 statement and I also would like to receive any documents. I  
19 haven't really received a lot of documentation and it's been a  
20 lot of my trying to catch up.

21 And so just based on those two reasons, I don't have  
22 any questions. I mean, we've come to an agreement and we're  
23 going forward. But I need you to acknowledge the agreement and  
24 incorporate its terms into the -- any decision that you make.  
25 So I just have a quick statement I'd like to make. It

1 shouldn't --

2 CHAIRPERSON HEATH: Okay. Let me just first --

3 MS. AFZAL: I tried to time it but it's a little more  
4 than three minutes.

5 CHAIRPERSON HEATH: Okay. Let me just first say that  
6 we're not going to accept a party status request from the desk.

7 MS. AFZAL: Okay.

8 CHAIRPERSON HEATH: There's a formal process for  
9 submitting --

10 MS. AFZAL: I know, but we were still working and the  
11 plans were still working and they --

12 CHAIRPERSON HEATH: Sure.

13 MS. AFZAL: -- were still applying. I mean, I think  
14 the plans were filed last week, so it wasn't really even a  
15 complete process.

16 CHAIRPERSON HEATH: Okay.

17 MS. AFZAL: So it was a little hard to keep up and  
18 catch up and figure out what was happening.

19 CHAIRPERSON HEATH: Okay. Also all of the  
20 documentation that we see --

21 MS. AFZAL: Uh-huh.

22 CHAIRPERSON HEATH: -- is available online. So you  
23 can go on to the Office of Zoning's website and pull any  
24 information on this case or any other.

25 MS. AFZAL: I did try and it looked like it was the

1 old documentation. But I may not have -- Sandy told me that I  
2 was looking in the wrong area.

3 CHAIRPERSON HEATH: Yeah.

4 MS. AFZAL: But, you know, it's been hard because  
5 I've had to try to find everything as opposed to you know,  
6 receiving things. So anyway, I don't want to belabor that.

7 CHAIRPERSON HEATH: Okay. Three minutes.

8 MS. AFZAL: I have a little more than three minutes  
9 so I beg your indulgence, just let me finish my talk. It's  
10 only -- it's very short.

11 CHAIRPERSON HEATH: Okay. Read quickly, please.

12 MS. AFZAL: I will. I will.

13 Okay. Good afternoon. My husband, Malcolm Burn and  
14 I reside at 3006 Ordway Street Northwest. Our home shares a  
15 common wall with Bonnie and Sandy Roskes, the applicants in  
16 this matter.

17 We bought our home in 1992 in part specifically  
18 because it was an R-1-B zone. A central purpose of our 1-B  
19 designation was to ensure that all properties would be  
20 protected from development, such as an addition by any neighbor  
21 that did not include a five-foot side yard setback or proper  
22 nine-foot courtyard I assume. In fact, the previous owners of  
23 our home sold and moved away because the owners of 3008  
24 objected to an addition extending the rear of the house on the  
25 property line.



1           As you are aware, our homes are grandfathered into  
2 the zone because they are nonconforming. However, they must  
3 now comply with the R-1-B Zoning Regulations unless a special  
4 exception is granted. We think it is very important for the  
5 sake of the future certainty of -- on the part of property  
6 owners and the quality of residential neighborhood that zoning  
7 regulations be honored in a consistent manner. That said, we  
8 are interested in being good neighbors and working  
9 cooperatively with Bonnie and Sandy since they made it very  
10 clear they intended to press for an addition, even if we  
11 opposed.

12           Bonnie and Sandy have acknowledged that our property  
13 will negatively impact -- will be negatively impacted by any  
14 addition and all of us have worked to come up with conditions  
15 that would help mitigate those effects. As a result we  
16 recently reached an agreement that produced a covenant filed on  
17 the title of 3008 Ordway Street.

18           Notwithstanding that agreement we believe it is  
19 imperative that any approval of the special exception emphasize  
20 that this is a unique circumstance and should not and will not  
21 be used as a precedent to vitiate the zoning regulations in  
22 this R-1-B zone.

23           In that regard our opposition -- excuse me. In that  
24 regard our position is that no special exception in this case  
25 should be granted without, among other provisions, the

1 following. The addition will be constructed no fewer than five  
2 feet east of the property line, creating a five-foot side yard  
3 setback or courtyard on the east side of the Roskes' property.

4 And these are all provisions that are within the covenant.  
5 Any addition will consist of a one-story to the rear of 3008  
6 Ordway Street, not to exceed 15 feet in length, and a second  
7 story will not be added either as part of this project or any  
8 later date.

9 The roof will be a shed roof with a maximum height of  
10 nine feet, seven inches, measured from the Roskes' current  
11 patio level, and will be no less than three to four inches  
12 below the current bottom of the lower gutter that is shared  
13 with us. The highest point of the roof will be attached to the  
14 current house and declined to the south end of the addition.  
15 The south end of the addition will not exceed eight feet, 10  
16 inches in height measured from the current patio level.

17 The roofline will be an uninterrupted five-degree  
18 incline from the north and to the south end. If the Roskes  
19 elect to shorten the addition by any amount the roofline will  
20 retain an uninterrupted five-degree incline that is  
21 contemplated above.

22 The roofline shall only be raised to the extent  
23 necessary to achieve the five-degree incline and at no point  
24 shall the high point of the roof exceed 10 feet, two inches at  
25 the high point attached to the house, and nine feet four inches

1 at the south end of the addition. There shall be no mechanical  
2 equipment on the roof of the addition or on the east side of  
3 the property of the current building on any addition anywhere  
4 on the east side of the Roskes' property.

5 There shall be no decking, covering, trellis, or  
6 other architectural embellishment or structure attached to or  
7 over the roof of the addition. All drainage related to the new  
8 construction shall be directed away from the property.

9 There shall be no windows on the east side of the  
10 addition.

11 With these and other provisions outlined in the  
12 covenant we do not oppose this application for an addition. We  
13 request the BZA take notice of the covenant and include it as  
14 part of any decision you reach. Thank you for this  
15 opportunity.

16 Oh, I even did it in less. Thank you.

17 CHAIRPERSON HEATH: Almost.

18 MS. AFZAL: Almost.

19 CHAIRPERSON HEATH: You were close. Thank you.

20 MS. AFZAL: Thanks.

21 CHAIRPERSON HEATH: All right.

22 MR. HEALY: Thank you, Chairwoman and Commissioners.

23 The property in question, 3008 Ordway Street is a Wardman  
24 style brick semi-detached home with a slate roof that is part  
25 of the historical area known as Cleveland Park.

1           It is a part of a cluster of four homes of this  
2 specific design in that row. I live in the same style of semi-  
3 detached Wardman house one block to the east. I express  
4 opposition to this addition since it will virtually fill the  
5 remaining back yard garden that is already -- that has not  
6 already been consumed by the parking pad and a shed that is at  
7 the back of this lot.

8           My opposition is based on the precedent it would set  
9 for this style of historical home to have their back yards,  
10 which are considered part of the defining historical character  
11 of the neighborhood, consumed by these types of additions.  
12 Witness within the last 24 months a home across the street from  
13 this property did a large rear garden addition and that ended  
14 up in the construction being halted due to the lawsuits that  
15 were filed by the neighbors. And I also noted with great  
16 interest, because the ANC has alerted me, that earlier on your  
17 agenda today you had another property just up the street, but  
18 across the street from this property, likewise wanting to add a  
19 rear addition.

20           So this precedence of rear additions is coming down  
21 very rapidly in our neighborhood. Therefore, my opposition is  
22 that it establishes a bad precedent for rear additions to this  
23 historical area.

24           It should also be noted that ARC, the Architectural  
25 Review Committee of the Cleveland Park Historical Society also

1 spoke out in opposition to this addition when they appeared at  
2 the HPRB hearing earlier. Thank you.

3 CHAIRPERSON HEATH: Okay. Thank you. Does the Board  
4 have any questions of either of these two witnesses?

5 All right. Is there anyone else wishing to speak in  
6 support? Anyone else wishing to speak in support? Anyone else  
7 wishing to speak in opposition?

8 No further opposition. Okay. Then we'll turn back  
9 to the applicant for any rebuttal or closing.

10 MR. HEISEY: Actually, let me start. If I may start?

11 This has been a long process. I don't mean to contradict the  
12 neighbor, but this has been going on for a year. There have  
13 been plans back and forth I'm sure. I've gone through about 16  
14 different layouts to try to meet the very extensive  
15 restrictions that you've heard read on that.

16 The whole reason this has even become a BZA case is  
17 because of the inadequacy of the Zoning Regulations shall we  
18 say, that it makes no allowance for a semi-detached structure  
19 that was existing at the time of adoption of these regulations.

20 In the R-1-B zone there is no allowance for a semi-detached  
21 structure, whereas every other zone you would be allowed a zero  
22 lot line by right to build on a semi-detached. In this zone  
23 there is absolutely no allowance for a semi-detached structure  
24 so it automatically, any addition, becomes a BZA case because  
25 it is nonconforming due to that circumstance.

1           The other issue that was raised was, this is quote,  
2 "filling the back yard." It is not filling the back yard. We  
3 are under the 40 percent allowable lot coverage that everybody  
4 is allowed to do by right. And that's the only comment. I  
5 believe the owner has some comments as well.

6           MR. ROSKES: Yeah. Thank you. So agreed, that's a  
7 point that's been raised a couple times by the ARC as well,  
8 questioning filling in a back yard or sort of having too much  
9 development on the property. But we are within the lot  
10 coverage requirement so we didn't -- you know, we're in the  
11 requirement so we didn't seek an exception for that because no  
12 exception is needed.

13           Just a couple of other comments. I think it's really  
14 pretty hard to argue that there is any new precedent being set  
15 with this. This is a pretty unextraordinary addition. There  
16 is several much larger ones that have been done. And not  
17 always to be done, of course sometimes there is inability to  
18 get to an agreement with neighbors. But in this case, you  
19 know, we were able to do so and mitigate the impacts as my  
20 immediate neighbor mentioned a moment ago.

21           Every party that has given us feedback, we've taken  
22 that feedback into account and pretty much conceded on every  
23 point. The only organization with whom we couldn't really  
24 reach an agreement was the ARC, as was just mentioned. And  
25 really, they didn't give us feedback to react to; to

1 accommodate. It was simply a kind of generic blanket objection  
2 to sort of the concept of a building. But I think again, given  
3 that there's no precedent this is not an extraordinary  
4 addition. It was very hard to accommodate that which was not  
5 specific to us.

6 I think it's also worth mentioning that the addition  
7 is not visible from any public space; from any public location.  
8 Not from Ordway Street, not from the alley. The only places  
9 that it's visible from is our neighbor, immediate neighbor, and  
10 Leila and Malcolm's immediate neighbors to the east. And from  
11 them, just barely visible. We've accommodated that, the  
12 visibility from our immediate neighbor by minimizing the height  
13 on the addition and in putting the fence between the properties  
14 to minimum the impact that it would have on Leila and Malcolm.

15 And I guess lastly, I mean, there have been a lot of  
16 plans and I think it's getting a little confusing to keep track  
17 of which plan is which, but we've endeavored to supply our  
18 neighbor with every plan that we've developed and to keep them  
19 updated on the process, and all the documentation was uploaded  
20 to the BZA site accordingly.

21 And just finally, I appreciate my neighbors' comments  
22 regarding the covenant. The covenant is a matter of public  
23 record and is attached to the property. And obviously we have  
24 full intention of complying with its terms in consideration for  
25 which our neighbors agreed not to object to our application.

1 CHAIRPERSON HEATH: Okay. Thank you. That was  
2 closing. So Board, ready to deliberate? Oh, question? Okay.

3 MR. MAY: Yeah. So the covenant has already been  
4 recorded?

5 MS. AFZAL: Yes.

6 MR. MAY: Okay. So I'm sorry, I have a question for  
7 your architect or designer. I'm sorry. What's your name  
8 again?

9 MR. HEISEY: Joel.

10 MR. MAY: Joel. Last name?

11 MR. HEISEY: Heisey.

12 MR. MAY: Heisey. And I'm sorry, you are Inner-city  
13 Development?

14 MR. HEISEY: Yes.

15 MR. MAY: LLC.? And are you an architect?

16 MR. HEISEY: Not registered, but yes, by training.

17 MR. MAY: I understand. Okay. So your first  
18 statement is that the only reason we're here is because the  
19 Zoning Regulations are somehow deficient?

20 MR. HEISEY: Yeah, there's no allowance in the R --

21 MR. MAY: Do you know what an R-1 zone is?

22 MR. HEISEY: Yes.

23 MR. MAY: What is an R-1 zone?

24 MR. HEISEY: It's for single-family housing.

25 MR. MAY: Right.



1 MR. HEISEY: But when you overlay a Zoning  
2 Regulations over existing you've got to make allowance for what  
3 is there and there's no allowance --

4 MR. MAY: And that's why you're here today. There is  
5 an allowance. There is a process for it.

6 MR. HEISEY: Okay. Then we're here for that.

7 MR. MAY: Okay. I just, I want to make this clear to  
8 you and maybe I don't know how much work you do in the  
9 District.

10 MR. HEISEY: I'm very --

11 MR. MAY: I don't really even care how much work you  
12 do in the District but if you come before this Board and say  
13 the reason we're here is because the Zoning Regulations are  
14 deficient, I don't think you're helping your case.

15 MR. HEISEY: Fine.

16 CHAIRPERSON HEATH: All right.

17 MS. AFZAL: I don't know if I'm being helpful or not,  
18 but do you -- would you like a copy of the covenant? Would  
19 that help in terms of your decision to --

20 CHAIRPERSON HEATH: No.

21 MS. AFZAL: -- add it to your --

22 MR. MAY: No.

23 CHAIRPERSON HEATH: No.

24 MS. AFZAL: -- terms and conditions?

25 CHAIRPERSON HEATH: No. But thank you. All right.

1 So any other questions, Board?

2 All right. Are we ready to deliberate? Okay.

3 Anybody have a particular -- of us? Okay. All right. So I'm  
4 inclined to approve this, you know, based on the information  
5 that we've received, all of the work that the applicant has  
6 done with the neighbors. I appreciate the covenant but we're  
7 not going to make it a part of this order. It already sounds  
8 from the language of the covenant like the applicant has agreed  
9 to what's in it based on the drawings that have been presented,  
10 and so while I appreciate that you all developed the covenant  
11 and expect that as -- that you will abide by it, it won't be a  
12 part of the order for however the Board decides to go forward  
13 with this case.

14 So I don't know if anybody else has any particular  
15 feelings one way or the other, but do you want to make a motion  
16 or do you want to --

17 MR. HILL: Yeah, no. I'll make a motion. But also I  
18 was just going to make a comment that I appreciate the -- are  
19 you the immediate neighbor?

20 MS. AFZAL: Yes. I'm the attached neighbor.

21 MR. HILL: Your attached neighbor?

22 MS. AFZAL: Yes.

23 MR. HILL: So I appreciate that you've gone through  
24 all of this to work with your neighbor, and you know, whether  
25 or not there's a precedent that might be set I mean, I think

1 that, you know, the lot occupancy that they're already within  
2 their right to do is something that, you know, might end up  
3 happening right up the -- you know, with other similar  
4 properties. But again they'd be coming before us, and so we'd  
5 have to see what happens on an individual basis with that.

6 That being said, yeah, I'd be happy to make a motion  
7 to approve Application 19101 for a special exception -- or this  
8 -- 19125?

9 MS. AFZAL: 2-5, I think.

10 MR. HILL: Oh, great. 19125, application of Sandy  
11 Roskes pursuant to 11 DCMR 3104.1 for a special exception under  
12 223, not meeting the open court requirements under 406.1, and  
13 the nonconforming structure requirements under 2001.3 and a  
14 special exception for the minimum previous service requirement  
15 under 412.3, to permit the construction of a one-story rear  
16 addition to an existing one-family dwelling in the R-1-B  
17 district on premises 3008 Ordway Street, Northwest.

18 CHAIRPERSON HEATH: Second. So the motion has been  
19 made and seconded. Any further discussion?

20 [Vote taken.]

21 CHAIRPERSON HEATH: So the motion carries. Thank  
22 you.

23 MR. MOY: Staff would record the vote as four to zero  
24 to one. This is on the motion of Vice Chair Hill to approve  
25 the application for the relief as he cited. Seconding the

1 motion, Chairperson Heath, also in support Mr. Peter May and  
2 Mr. Jeffrey Hinkle, board seat vacant. Motion carries, Madam  
3 Chair.

4 CHAIRPERSON HEATH: Summary.

5 MR. MOY: Summary order. Thank you.

6 CHAIRPERSON HEATH: Yes. All right.

7 [Pause.]

8 MR. MOY: The next application are parties to the  
9 table to Application No. 19112 of 307 Taylor Street Northwest,  
10 LLC. Again, this was captioned and advertised for a special  
11 exception relief from the conversion to apartment house  
12 requirements under Section 336. This is to permit the  
13 conversion of a pre-1958 residential building into a three-unit  
14 apartment house in the R-4 district at 307 Taylor Street  
15 Northwest, Square 3312, Lot 44.

16 CHAIRPERSON HEATH: All right. All right. Would you  
17 all please introduce yourselves?

18 MR. CRISCI: Mike -- excuse me. Mike Crisci, co-  
19 owner of the building in question.

20 MR. KADLECEK: Cary Kadlecek from Goulston and Storrs  
21 on behalf of the applicant.

22 MR. PRICE: KC Price, architect.

23 CHAIRPERSON HEATH: Okay. Thanks. And thank you all  
24 for your patience. When we developed the order for the agenda  
25 today we thought that there was still a party status

1 application on this and so we were giving you time to work  
2 through the things that apparently you've already worked  
3 through with your neighbors and opposing parties. So thank you  
4 for being patient today.

5 Let's see. So I think given the revisions that  
6 you've made to the application and to your drawings, it looks  
7 like I don't have any issues with this. Does the Board have  
8 any issues or questions you want to raise with the applicant?  
9 Okay.

10 MR. MAY: I mean, we clearly had one party in  
11 opposition that dropped --

12 CHAIRPERSON HEATH: We had two initially.

13 MR. MAY: Well, I know. One dropped and then the  
14 other one -- have you heard definitively?

15 MR. KADLECEK: We've never heard from them since we  
16 revised the plans. I don't know definitively but I think that  
17 they were participating in some fashion with the negotiating  
18 for the revised plan, so I believe that they probably didn't  
19 withdraw simply because maybe they didn't know to. I'm just  
20 speculating, but I don't know.

21 MR. MAY: Okay. No.

22 CHAIRPERSON HEATH: Okay. And I assume all of the  
23 people who signed petitions in opposition, that was all prior  
24 to the revised plans?

25 MR. KADLECEK: Yes. Since we revised the plans and

1 went to the ANC in early December we have not heard any  
2 opposition.

3 CHAIRPERSON HEATH: Okay. All right. Okay. Then  
4 normally we would have you make a presentation at this point  
5 but it doesn't look like the Board needs a full presentation at  
6 this time. So if you're okay with us proceeding on, we will do  
7 so.

8 MR. KADLECEK: Yes, we're comfortable with that.

9 CHAIRPERSON HEATH: And then come back to --

10 MR. KADLECEK: We'll rest on the record. Thank you.

11 CHAIRPERSON HEATH: All right. So then we'll turn to  
12 Office of Planning for any additional comments.

13 MS. RAPPOLT: Megan Rappolt, for the record. Case  
14 manager on this project, and we'll continue to support the  
15 application with the recommendation of approval.

16 CHAIRPERSON HEATH: Okay. Thanks. Board, any  
17 questions of Office of Planning? Applicant, any questions of  
18 Office of Planning?

19 MR. KADLECEK: No questions.

20 CHAIRPERSON HEATH: All right. Okay. We also have a  
21 letter of no objection from DDOT and a letter of approval from  
22 ANC 4C on this one. Is there anyone here from that ANC 4C?  
23 Okay.

24 All right So again, as we mentioned, you had  
25 significant opposition and we appreciate the work that you've

1 done to turn that around. And yeah, you can.

2 MR. HILL: No, I was just curious. We get a lot of  
3 the similar cases. What did you do to get all the opposition  
4 to drop? How did you revise the plans?

5 MR. CRISCI: I think we brought it in effectively  
6 half of what we originally proposed. It was right around a 39  
7 and a half foot addition. You know, the permit was literally  
8 printed out the morning the R-4 changes took place, so it was  
9 voided then and there. So originally we were trying to occupy  
10 the same footprint, but there was a lot of opposition towards  
11 that. So we brought it in to a 20-foot addition on the first  
12 two levels, and then bringing it in another eight feet on the  
13 top floor. There was a lot of concern about us removing the  
14 front porch as well because everybody was very concerned about  
15 kind of maintaining that same line of sight on the front of the  
16 building. So we complied to agree to revise it in the fashion  
17 to still allow light to get into the basement and provide for  
18 an entrance there, but to maintain that same porch look.

19 Those were the two, I think, biggest concerns amongst  
20 some other minor things like using particular materials on the  
21 outside and things of that nature. No roof deck. We removed  
22 the roof deck.

23 MR. HILL: Are there windows on the side in the --

24 MR. CRISCI: Not on the rear, no.

25 MR. HILL: Okay. Okay.

1 MR. CRISCI: Because it's property line to property  
2 line.

3 MR. HILL: Okay.

4 MR. CRISCI: So those would be, I guess, at risk  
5 windows if we did that.

6 MR. HILL: Congratulations.

7 MR. CRISCI: Thank you.

8 CHAIRPERSON HEATH: Okay. All right. So then with  
9 that we would normally turn back to you for closing.

10 MR. KADLECEK: We have nothing to add, thank you.

11 CHAIRPERSON HEATH: Okay. Thank you. Do you have a  
12 question?

13 MR. MAY: I don't have a question. I'm ready to  
14 deliberate.

15 CHAIRPERSON HEATH: Go ahead.

16 MR. MAY: So yes, it's good that the opposition  
17 dropped, but even more importantly that you fixed the building.  
18 I mean, what you had before was terrible. Absolutely  
19 terrible. I won't even go into why I think it was terrible,  
20 and I'm being nice by even saying it was terrible.

21 I'm glad it came back to where it is. I think what  
22 you have now is acceptable and clearly is acceptable to the  
23 neighbors. But I hope that as you continue to develop  
24 properties across the city that you, you know, you got  
25 something out of this process and the next time around, you



1 know, you wind up with something that's a better proposal to  
2 start with because I mean, where you wound up is good, where  
3 you started was not. So I appreciate where it is now. Thank  
4 you.

5 CHAIRPERSON HEATH: All right. So then I will make a  
6 motion --

7 MR. MOY: If you don't mind, Madam Chair.

8 CHAIRPERSON HEATH: Sure.

9 MR. MOY: This is for the staff's own edification  
10 since we write the orders.

11 CHAIRPERSON HEATH: Uh-huh.

12 MR. MOY: Based on the Board's decision-making.  
13 Since the other party status applicant, Burns and Otero were  
14 not present, can we assume then that the Board denied their  
15 request for party status?

16 CHAIRPERSON HEATH: Yes.

17 MR. MOY: I just want closure on that.

18 CHAIRPERSON HEATH: Yes.

19 MR. MOY: Thank you.

20 CHAIRPERSON HEATH: We'll formally deny.

21 MR. MOY: Thank you.

22 CHAIRPERSON HEATH: Okay. All right. Okay. All  
23 right. Then I will make a motion that we approve the request  
24 for the special exception under 336 for the residential  
25 conversion for Application No. 19112.

1 MR. HINKLE: Second.

2 MR. HILL: I second.

3 CHAIRPERSON HEATH: Lots of seconds. All right. So  
4 the motion has been made and seconded. Any further discussion?

5 [Vote taken.]

6 CHAIRPERSON HEATH: The motion carries. So summary  
7 order since it was denied.

8 MR. MOY: Okay. Summary order. Yes, that's -- this  
9 on the motion of Chairperson Heath. I don't know what to do  
10 about who seconded because from where I'm sitting it was all in  
11 the same line. Mr. Hinkle. Okay. Mr. Hinkle seconded it.  
12 Also in support Vice Chair Hill and Mr. Peter May. Thank you,  
13 Madam Chair. Summary order.

14 MR. KADLECEK: Thank you.

15 CHAIRPERSON HEATH: Thank you. So our last  
16 application.

17 MR. MOY: Okay. I believe the Board is on to its  
18 final application, which is 19154. This is the application of  
19 District --

20 CHAIRPERSON HEATH: That's right.

21 MR. MOY: District Design and Development Argonne,  
22 LLC. Case 19154 as noticed and advertised for variance relief  
23 on the minimum parking dimension requirements under 2115.1 to  
24 convert an existing flat into a four-unit apartment house in an  
25 R-5-B district at premises 1636 Argonne Place Northwest, Square

1 2589, Lot 460.

2 CHAIRPERSON HEATH: Thank you. All right. So I  
3 don't know if anything came out of any further discussion  
4 today, but if you could introduce yourselves and then let us  
5 know where you all stand, particularly the party who has  
6 requested party status.

7 MR. KEATS: Greg Keats, property owner.

8 MR. SULLIVAN: Marty Sullivan from Sullivan and  
9 Barros on behalf of the applicant.

10 MR. GAMBRELL: Alan Gambrell, Concerned Citizens of  
11 Argonne Place.

12 MS. BRUNO: My name is Ana Bruno, I'm also a member  
13 of the Concerned Citizens of Argonne Place.

14 CHAIRPERSON HEATH: Okay. So you have a party status  
15 request that you've put before the Board.

16 MR. GAMBRELL: Yes.

17 CHAIRPERSON HEATH: Are you still seeking party  
18 status request?

19 MR. GAMBRELL: Yes.

20 CHAIRPERSON HEATH: Okay. And we've received that  
21 request, obviously. So you will represent the two of you.  
22 Okay. As one party.

23 MR. GAMBRELL: Yes. In an efficient fashion.

24 CHAIRPERSON HEATH: Okay. Excellent. We like to  
25 hear that. All right. So does the Board have any issues with

1 granting the party status request?

2 Okay. So we'll grant your party status request. And  
3 as such, as a party you'll have the opportunity to both speak  
4 and cross-examine. You can bring forward any witnesses that  
5 you might see fit, but we'll start with the applicant and then  
6 we'll turn to you at the appropriate time. All right.

7 MR. SULLIVAN: Thank you, Madam Chair and members of  
8 the Board. Again, my name is Marty Sullivan with the law firm  
9 of Sullivan and Barros. I'm here today on behalf of District  
10 Design and Development Argonne, LLC., the owner of the property  
11 located at 1636 Argonne Place Northwest. And with me here  
12 today is the sole principal of that entity, Mr. Greg Keats.

13 I think all the information is in the record and I  
14 want to go through it. And Mr. Keats is also here to testify  
15 about the cost and other expected damages to him as a result of  
16 his reliance on the initial approval from DCRA that the parking  
17 space provided was sufficient to comply with the requirements  
18 of the Zoning Regulations.

19 CHAIRPERSON HEATH: Mr. Sullivan, before you start,  
20 about how much time do you think you need for your  
21 presentation?

22 [No audible response.]

23 CHAIRPERSON HEATH: Perfect. Okay. All right. So  
24 five minutes?

25 MR. SULLIVAN: Yes. I just want to go over the facts

1 in the record.

2 A little bit of background, the property was a two-  
3 unit building at the time that Mr. Keats purchased it with the  
4 intention of renovating the property and converting it into a  
5 four-unit apartment building. This is in the R-5-B district,  
6 although it's currently subject to a rezoning amendment.

7 Mr. Keats applied for and receive a building permit  
8 on September 9th, 2014 for the renovation and the conversion.  
9 And that building permit authorized the renovation of the  
10 property into a four-unit configuration. And that building  
11 permit also certified as compliant, the 20-foot-wide by 16 feet  
12 long parking pad area at the rear of the property. In the  
13 record you'll see a surveyor's plat that was filed with the  
14 permit application showing the 16-foot-long by 20-foot-wide  
15 area available for parking.

16 So that was in September that the permit was issued.  
17 In December of that year, so three months later, DCRA issued a  
18 stop work order for a condition unrelated to the parking area.  
19 It was a gross floor area question regarding the grade at the  
20 rear of the property. And the applicant corrected that  
21 situation shortly thereafter in December, and work commenced  
22 again in December.

23 In February of the next year, so now we're five  
24 months after issuance of the permit, Mr. Gambrell, with the  
25 same group that's here today opposing this application, filed

1 an appeal of that building permit that was issued five months  
2 previous to that.

3 In May, 2015, so now we're eight months after the  
4 permit was issued, one week before that appeal hearing the  
5 Zoning Administrator issued another stop work order, this time  
6 claiming that the fix that was approved in December did not  
7 conform to the Zoning Regulations and effectively at that point  
8 what we had to do was -- well, there was a retaining wall that  
9 was installed to adjust the grade. That retaining wall was  
10 moved in further, and the whole point being that he -- the  
11 Zoning Administrator was requiring that this parking pad remain  
12 at 20 by 16.

13 So the party opponent and at that time the appellant,  
14 in their initial appeal which was five months after the permit  
15 issuance, made no mention of any violation of parking. And in  
16 fact it was not until three months after that on May 6th that  
17 the appellant, party opponent here, raised the size of the  
18 parking area for the first time.

19 So at that point as the intervener in the appeal, Mr.  
20 Keats filed a motion to dismiss for failure to timely file. Of  
21 every decision made by DCRA except the ones that were altered  
22 in the December and in the May, which only related to the  
23 retaining wall and the gross floor area and the rear elevation  
24 issues. So at a hearing in July in 2015 this Board granted our  
25 motion to dismiss for failure to timely file all those

1 decisions. And then they heard the appeal on the substance of  
2 the matter regarding the retaining wall and the gross floor  
3 area issue.

4           However, also I might add too, at that hearing the  
5 Chairman asked me to drop my estoppel claim because of the  
6 dismissal, and I did that in reliance on that dismissal. So in  
7 the decision meeting then in September the appeal was denied as  
8 to the retaining wall, gross floor area issue, and surprisingly  
9 then the Chairman mentioned that because the parking spaces  
10 were not 19 feet long, that that was a violation and the appeal  
11 was granted in that respect. We had thought that that issue  
12 had already been dismissed. So that was a total surprise to  
13 Mr. Keats and myself because the 16-foot-long parking space had  
14 been approved initially several months before issuance of the  
15 permit as you can see from the plat in the record.

16           And the length of that parking space was never  
17 increased at all throughout any of the permit revisions made as  
18 part of the retaining wall issue. It never measured more than  
19 16 feet. And it was never compliant with 2105.1.

20           So also, too, it's not a determining factor in my  
21 opinion, but Mr. Keats did not have land use counsel when he  
22 bought this property or applied for the permit. But in the  
23 time period between the issuance of the permit in September,  
24 2014, and eight months later when the parking issue was first  
25 raised that it may not be fully compliant, the applicant spent

1 the amount of funds as shown in the record with our prehearing  
2 statement, completely renovating the property and converting it  
3 to the four units, including the footprint of the building  
4 which would need to be corrected.

5 So in order for Mr. Keats to now comply with the  
6 requirement to provide one parking space at 19 feet in length,  
7 or two parking spaces, it would cost him several hundred  
8 thousand dollars more in construction costs, finance costs,  
9 lost value, and lost sales. And I do have a spreadsheet here  
10 to provide to the Board.

11 In the record to this point I had talked about the  
12 amount he spent in reliance up to that point. I thought I  
13 should also talk about the amount to fix if there is a  
14 solution, and one of the solutions is to scale the building  
15 back another three feet at a height of at least 10 feet.

16 MR. MAY: Why 10 feet?

17 MR. SULLIVAN: I think that's the clearance required  
18 under the -- it might be under building code. I'm not certain  
19 about that.

20 MR. MAY: For a parking space?

21 MR. SULLIVAN: Well, there's a slope to the parking  
22 space as well regarding the retaining wall. So I think it's --  
23 whatever it is that impacts the first --

24 MR. MAY: I'm just, I mean, you know, you're saying  
25 that you're developing this cost based on the 10 feet. I



1       assume that cuts into the ground for the main floor.

2               MR. SULLIVAN:  It counts.  It's just one unit.  It  
3       cuts into the main floor.

4               MR. MAY:  It cuts into the main floor.  Would it cut  
5       into the main floor if it were only eight feet?

6               MR. KEATS:  Yes.  Yes, it would.

7               MR. MAY:  Okay.

8               MR. KEATS:  So yes, it would, sir.

9               MR. MAY:  That's fine, because I mean, I would have  
10       expected something more like eight feet or seven feet even  
11       because parking spaces don't have to be that tall.  But if  
12       it's, you know, it's going to be a lot more expensive if you're  
13       cutting into the main floor as opposed to just cutting into the  
14       basement level or the cellar level, right?

15              MR. KEATS:  Correct.

16              MR. MAY:  So is there any way that you could have  
17       gotten sufficient clearance for a parking space at you know --  
18       I mean, if it were at seven feet would it still be interfering  
19       with the main floor?

20              MR. KEATS:  From what I understand it is not.  The  
21       drive under distance is 10.

22              MR. MAY:  Drive under distance.  I mean, we're just  
23       talking about having a notch taken out.

24              MR. KEATS:  Correct.

25              MR. MAY:  All right.  So what did you just give us?

1           MR. SULLIVAN: So this is a spreadsheet that Mr.  
2 Keats can testify to regarding his estimated cost and damages  
3 from having to complete the fix in a sense. And a lot of the  
4 cost --

5           MR. MAY: I'm sorry. It's going to cost \$835,000 to  
6 complete the fix?

7           MR. KEATS: That is correct, sir. This is  
8 substantially --

9           MR. MAY: This is not -- I mean, you're not making --

10          MR. KEATS: You know, there's substantially --

11          MR. MAY: You have a reasonable case here, but this  
12 is nonsense. It's not \$800,000 to fix this.

13          MR. SULLIVAN: Well, it's --

14          MR. MAY: It's just not.

15          MR. SULLIVAN: It's about 500,000 of that is soft  
16 cost and financing costs.

17          But granted, we can -- I mean, we can go through the  
18 specific numbers on the hard costs. But I would submit it  
19 doesn't require that amount to make a reliance case.

20          MR. MAY: See, what this does is it undermines the  
21 sort of financial informations that we receive from applicants.

22 And you, Mr. Sullivan, as an attorney representing multiple  
23 clients should understand that when information like this is  
24 submitted and it's clearly off base that you undermine  
25 applicants in many cases doing these things. I don't know what

1 it is. Maybe I'm just -- I needed more coffee today. This is  
2 what happens when I don't get lunch. This is just -- I mean,  
3 this is -- you're not helping your case. You're not helping  
4 the case of other people who come before this Board when you  
5 submit nonsensical information like that. There is no way in  
6 the world that this is an \$800,000 fix, even with soft costs.

7 And so I mean, I suggest that you focus on the other  
8 aspects of your case rather than spend a lot of time on this,  
9 unless my fellow board members think that there's value in  
10 this.

11 MR. SULLIVAN: Well, I can have Mr. Keats testify  
12 about some of the specific numbers and we can establish a  
13 realistic cost if that is not accurate. But the cost of the  
14 fix -- well, first of all let me take a step back and then, as  
15 argued in the prehearing statement I presented the case is the  
16 BZA has obviously found on many occasions that when the  
17 principles of estoppel and reliance are present in the  
18 permitting history in such a way that an applicant has moved  
19 forward in good faith in making expensive and permanent  
20 improvements and reliance on an approval from DCRA, that that  
21 situation in permitting history can be considered a unique  
22 condition which may lead to a practical difficulty.

23 And when I compare this case to other cases the  
24 amount of damage or correction or fix needed to make that case  
25 is not that great. One of the cases that was before the Board

1 about two years ago was a request to do 100 percent lot  
2 coverage for a deck. And that was a permit that was approved  
3 and then revoked three months later by DCRA. And on the  
4 evidence that that applicant had purchased custom made wood for  
5 that deck, even though he hadn't really started construction of  
6 the deck when it was revoked, the Board granted variance relief  
7 in that case.

8           And I would point out that I think the Board should  
9 consider the degree of variance relief requested in relation to  
10 the amount of damage and expense to fix that. And I think  
11 that's an important point here. So the relief being requested  
12 here amounts to three feet of length or a parking requirement  
13 instituted in 1958. The regulations acknowledge that this  
14 length is a legitimate length for compact car spaces, and DDOT  
15 has registered that it has no opposition to this application,  
16 and the Office of Planning is also in support and has laid out  
17 the justification for the variance relief in a concise and  
18 articulate manner.

19           I think we could have made the case without the  
20 numbers and I kind of wish we had. But because the damage and  
21 the fix is obvious if you have to scale back a building. And a  
22 part of the cost, of course, relates to where we are in the  
23 process right now as well. We're about to sell units and about  
24 to finish the job.

25           And at any rate the damage to this owner is that if

1 this doesn't go through it's probably the lender that makes the  
2 fix anyway. So Mr. Keats again is available to answer  
3 questions on these numbers. And but I would argue, based on  
4 other cases, that the amount could be as little as 10 to  
5 \$15,000 and still make the -- when you consider the degree of  
6 the variance that we're requesting, I think.

7 So we thank you for your consideration of this  
8 application and we are happy to answer questions. And I have  
9 Mr. Keats here to answer questions.

10 MR. MAY: Okay. I'll ask a couple questions. Is  
11 that all right?

12 CHAIRPERSON HEATH: Uh-huh.

13 MR. MAY: So I do appreciate the fact that you got  
14 around to the real point of this, which is the extent of the  
15 relief requested. I mean, you're really talking about a  
16 reduction from a standard parking space to a compact parking  
17 space, right? That level of relief is not very high and it's  
18 not hard to meet a financial test for that.

19 So the -- let me ask you this, though. For this  
20 particular project, weren't the parking spaces required from  
21 the beginning? I mean, they were a requirement from the  
22 beginning, right? They just were somehow missed in the  
23 permitting process?

24 MR. SULLIVAN: I think, yes, they were missed. And I  
25 think it should have been -- the requirement should have been

1 at least one, if not two.

2 MR. MAY: Okay.

3 MR. SULLIVAN: Depending on whether or not you get  
4 the -- whether or not there was a parking space there already.

5 MR. MAY: Right.

6 MR. SULLIVAN: But we're asking for two.

7 MR. MAY: So and as I understand it, there was a  
8 garage under the building originally?

9 MR. KEATS: Yes.

10 MR. MAY: There was.

11 MR. KEATS: Yes, sir.

12 MR. MAY: And that was built out as habitable space  
13 presumably. Right?

14 MR. KEATS: Correct.

15 MR. MAY: And that was in your original permit  
16 application.

17 MR. KEATS: Yes, sir.

18 MR. MAY: At no point did you include in a permit  
19 application a, you know, those parking spaces remaining.

20 MR. KEATS: That's correct.

21 MR. MAY: Okay. And did you actually show the 16-  
22 foot parking spaces --

23 MR. KEATS: We did.

24 MR. MAY: -- on the plans?

25 MR. KEATS: Yes, sir.

1           MR. MAY: And they were simply missed. So did you --  
2 I mean, you didn't have land use counsel at the beginning. Did  
3 you have an architect?

4           MR. KEATS: I do. I mean an architect designed and -  
5 - designed the plans and got the permits.

6           MR. MAY: Right. Okay. So the architect from the  
7 beginning misses -- I mean, it, you know, certain things are --  
8 you know, we do want DCRA to do everything correctly and catch  
9 everything that they're supposed to catch, but the  
10 responsibility to meet the code still lies with the architect.  
11 And so I mean, this was -- in spite of how this all came to  
12 pass the mistake that was made -- the first mistake that was  
13 made was made by your architect.

14           I guess I don't really have any other questions at  
15 this point. I'm happy to move on.

16           CHAIRPERSON FLETCHER: So, you have the opportunity  
17 now to cross-examine the applicant if you have questions you  
18 want to ask based on their statement.

19           MR. GAMBRELL: Yeah. In the interest of efficiency,  
20 we'd like to move on to our statement --

21           CHAIRPERSON FLETCHER: Okay.

22           MR. GAMBRELL: -- if that would suit you.

23           CHAIRPERSON FLETCHER: Sure. You can do that.

24           MR. GAMBRELL: Okay. Terrific.

25           CHAIRPERSON FLETCHER: You can do that now.

1           MR. GAMBRELL: Good afternoon, Board, and thanks for  
2 the time and I'm just going to cut right to the chase and then  
3 if you'll entertain about a five-minute statement, series of  
4 clarifications we have, which we think will help your decision  
5 making process.

6           The conclusion really is, compact spaces don't work  
7 in this situation. That's our premise. They just do not work  
8 in this alley, and that there actually is, in our estimation, a  
9 solution to create 19-foot-long spaces at little to no cost in  
10 relation to the building scheme that's been approved by DCRA.

11           So having said that the conclusion, if I shall  
12 continue, we've provided, of course, our written statement and  
13 we also provided a response to the Office of Planning's  
14 recommendation to approve. And, Mr. Jesick, I don't mean to be  
15 rude, but we found that your statement to be quite flawed and  
16 we did in fact submit a statement to that affect for the  
17 record, which I assume has been approved. I'm not sure if we  
18 covered that or not.

19           CHAIRPERSON FLETCHER: It's in the record.

20           MR. GAMBRELL: Yeah. Okay. Terrific.

21           We are Concerned Citizens of Argonne Place. We're 15  
22 individuals. There are only 17 homes on the block so it's  
23 pretty wide spread opposition to this parking variance. And  
24 you probably don't see that very often.

25           The first clarification we'd like to provide, and



1 particularly in reference to what was just outlined, is the  
2 parking situation actually substantially changed fairly  
3 recently. And it did so on June 23rd, 2015. Let me walk  
4 through that for you. And by the way, the changes were not  
5 made by the Zoning Administrator. They weren't made by the  
6 neighbors. They weren't made by the Board of Zoning  
7 Adjustment. They were new complications that were created. We  
8 think they were self-inflicted wounds.

9           This is the current situation at 1636 Argonne Place.  
10 There was in fact a garage there, a grandfathered, thus  
11 compliant garage, which was removed as part of the renovation  
12 scheme. And it was removed in September 2014.

13           Jumping all the way past -- Marty gave a summary of  
14 the permitting process, coming up to June 23rd, 2015, that  
15 permit is when things changed erratically. And what that did  
16 is it created the following scenario where it authorized a 12  
17 percent grade and a 16-foot-long garage with the indent being  
18 the new adjacent finish grade, which the Board accepted. I  
19 might add, the character on there looks an awful lot like Lloyd  
20 Jordan if you notice the gentleman standing on the 12 percent  
21 grade.

22           MR. MAY: I'm sorry. What are we seeing there?

23           MR. GAMBRELL: This is the --

24           MR. MAY: I'm really confused.

25           MR. GAMBRELL: Sure.

1 MR. MAY: And forget about Lloyd Jordan, but --

2 CHAIRPERSON FLETCHER: Slope. That's the slope of  
3 the driveway.

4 MR. GAMBRELL: Yeah, this is the rear yard.

5 MR. MAY: Yeah.

6 MR. GAMBRELL: And the permit issued June 23rd, 2015  
7 authorized installation of a 12 percent grade extending from  
8 the alley up to the back of the building. The indentation you  
9 see is the -- which I was not going to discuss because it's not  
10 on the table, but that's the -- the Board accepted that the new  
11 adjacent finished grade is inside of that indentation for  
12 purposes of designating the lower level as a cellar instead of  
13 a basement.

14 MR. MAY: Okay.

15 MR. GAMBRELL: Okay. When we met July 7, 2015, the  
16 discussion of parking was actually very much on the table  
17 before BZA, contrary to what Mr. Sullivan said. There was  
18 never -- frankly I just found it perplexing that the  
19 applicant's attorney would state that quote, "The applicant had  
20 no reason to believe that the size of the parking spaces were  
21 at issue." And to state that, quote, "There was an apparent  
22 dismissal of the parking allegation by the Board." That's  
23 simply not accurate. There was never any apparent dismissal.

24 On September 15 -- and actually, the reason for that  
25 is a discussion we held on July 7th was extensive in terms of

1 what is the definition of a parking space under 2115? What is  
2 the definition of a driveway?

3 On September 15, 2015 the Board issued its ruling on  
4 parking. The Board said that the applicant's June permit  
5 rendered this rear yard as a driveway, rather than a parking  
6 area under the definition of parking under 2115.1. To be  
7 clear, the Board ruling says that, "The rear yard configuration  
8 with its proposed 12 percent slope qualifies the area as a  
9 driveway."

10 And I forgot to make this comment earlier. On that  
11 basis -- this is much more than a request for a parking  
12 variance. This request is actually asking this Board to  
13 reverse itself in its September 15, 2015 ruling, essentially to  
14 take another bite of the apple of what's been put before this  
15 Board in this particular property.

16 So we believe that the sequence of events clearly  
17 shows that the parking conditions have changed and did so quite  
18 recently. That point, however, is overlooked by the applicant  
19 and is flat out completely missed by the Office of Planning's  
20 analysis. And as you know, the Office of Planning recommended  
21 approval and we found so many flaws in the analysis so we did  
22 find fit to respond.

23 Moving on, I'd like to briefly comment on the three-  
24 prong test, and it is our belief that if this test is to have  
25 any teeth what we have to say really should cause you to perk

1 up a bit. The first issues is the test issue, you need  
2 characteristics and conditions. And there is actually nothing  
3 unique about the conditions at this property. In fact, this  
4 picture at the back you'll see the yellow arrows represent  
5 garages that other people have. This property, on the far  
6 right, had a garage. The conversion scheme involved removing  
7 that garage. The unique condition was created, was a self-  
8 inflicted wound.

9           Secondly, the issue of providing information to the  
10 DCRA for purposes of approval, the applicant cites case law,  
11 and quite a bit of case law, citing exceptional circumstances  
12 that can be -- to quote, "Events extraneous to the land," and  
13 references good faith. Well, as you know, this is an important  
14 sheet, the zoning data summary sheet, which calls for  
15 information on the size of parking spaces. And it clearly says  
16 nine by 19, both existing and proposed.

17           From March 2014 to December 2014, to June 2015, and  
18 I'm sorry about the size, each one of the zoning data summary  
19 sheets indicates that there are two existing and two proposed  
20 nine by 19 parking spaces. It does that three separate times.

21           I think from the standpoint of -- and I say this as a  
22 -- and we are being non-lawyers. None of these cases that are  
23 cited by the applicant's attorney really justifies  
24 noncompliance with the Zoning Regulations by pleading ignorance  
25 of the regulations or repeatedly filling forms out incorrectly.

1 The applicant states that it had, quote, "No reason to believe  
2 that the parking spaces were a problem." I find that hard to  
3 believe, actually, based upon the information that was filled  
4 out.

5 By accepting this good faith argument, the Board is  
6 inviting developers to try and frankly slip one past the DCRA,  
7 and we just don't see a matter of good faith in terms of what  
8 was submitted to DCRA in terms of seeking approval.

9 The second test is whether there would be practical  
10 difficulties. What the applicant has under the June 2015  
11 permit is to remove three foot within the rear wall of the  
12 building to install a retaining wall and to also install a 12  
13 percent grade driveway. We think there's a solution that works  
14 within this and actually could be low to no cost as follows.  
15 Simply don't install the 12 percent grade, don't install the  
16 retaining wall. You've got a 19-foot parking space. You don't  
17 need a parking variance.

18 The third test, and I'm nearly finished, is the issue  
19 of whether this would be detrimental to the public good or the  
20 integrity of the Zoning Regulations. And we have quite a few  
21 reasons we think this would be quite problematic. And the  
22 first one is to the integrity of this very Board. You issued a  
23 decision on September 15, the applicant's December 29, 2015  
24 prehearing statement seems to blame Chairman Jordan and the BZA  
25 for their ruling, and the determination that the proposed 12

1 percent grade alters the area definition from a parking area to  
2 a driveway. We don't think that's correct. We think that does  
3 damage to you.

4           Secondly, we think this -- by granting this variance  
5 you would do harm to the definitions of parking under 2115, and  
6 the definition of driveways in 2117.8, which were clarified in  
7 the September 15, 2015 case.

8           Furthermore, just want to make an observation. The  
9 Office of Planning says that the compact spaces are, quote,  
10 "Common throughout the city." That's odd reasoning to us.  
11 That's actually the kind of reasoning you hear a child give to  
12 a parent when caught doing something, that's all the other kids  
13 are doing it. And as we already explained, Argonne Place homes  
14 have legal parking in the form of garages with driveways.

15           The third harm would be in terms of creating parking  
16 on a 12 percent grade, which is simply unsafe and Ana is going  
17 to speak more to that.

18           The fourth harm, it's already a congested alley. The  
19 Office of Planning asserts that the variance requested appears  
20 to be rare and therefore is okay. That's not accurate.  
21 There's actually, on record, a developer who owns three  
22 properties next to this property who has already requested two  
23 parking spaces for each of those for an additional six parking  
24 spaces on this alley. In total it would increase the parking  
25 intensity for the homes by 23 percent. And that's pretty

1 significant. And it was quite an oversight on the Office of  
2 Planning's part.

3           The fifth harm is to the homeowners on Argonne Place  
4 who face new congestion with more cars and little to no space  
5 for garbage and recycling bins. Again, the Office of Planning  
6 has overlooked this concern and we did a little mock up here,  
7 and it just happened a car was parked. And they're not against  
8 the back of the building, we'll admit, but it's possible that  
9 the cans would actually have to go on the left side where it  
10 says, "Cans here." And if those cans don't go there, and there  
11 would have to be eight of them, four recycling, four garbage,  
12 they would have to go next to the cars. There's simply no  
13 space for these cans.

14           So on that basis I think I'm going to wrap up and  
15 turn it over to Ana to go ahead and finish up.

16           MS. BRUNO: My name is Ana Bruno. My parents, Mr.  
17 and Mrs. Louis Canizares, are the present owners of 1638  
18 Argonne Place, the house next door to the 1636 property owned  
19 by the applicant. My family has lived there since 1965.

20           Both residents of Argonne Place and the Argonne  
21 Apartments access their respective parking spaces through a  
22 shared alley which is entered and exited from the end of  
23 Argonne Street. Because of the proximity of their property, my  
24 family would be most impacted by the applicant's request for a  
25 parking area variance. On behalf of myself and my family we

1 object to the grant of such a variance.

2 In 2002 the owners of 1636 property converted the  
3 basement to a rental unit. The rear yard was removed and  
4 paved. However, the garage and driveway remained intact.  
5 Since 2002 the condition of the property was not changed. In  
6 2014 the applicant purchased the property with a single-car  
7 garage. He subsequently eliminated the use of the garage and  
8 therefore created a condition that had not previously existed.

9 According to his LinkedIn profile the applicant  
10 states that he has 19 years in commercial, industrial, and  
11 property management. His skills include but are not limited to  
12 real estate development, investment properties, strategic  
13 planning, construction, and due diligence. It is highly  
14 unlikely that the applicant was not familiar with DCRA parking  
15 regulations. To suggest that the applicant had no reason to  
16 believe that the size of the parking spaces were an issue only  
17 further underscores his disregard for the concerns of his  
18 neighbors. Parking is a contentious issue in Washington where  
19 many residential neighborhoods are historic in nature and a  
20 lack of space and access is the usual condition.

21 From a personal perspective I'm greatly concerned  
22 about my family's physical welfare that such a request, if  
23 granted, would affect. The appellant seeks a minimal variance  
24 relief for parking two compact cars. Although compact cars are  
25 smaller in length than the mid-size and large vehicles, they



1 are not necessarily less wide. There is simply not enough room  
2 to accommodate two compact cars and the requisite number of  
3 garbage and recycling receptacles necessary to support waste  
4 disposal for a four-unit apartment. This lack of space can  
5 foreseeably result in a configuration wherein receptacles are  
6 placed in the common alley driveway, or to cars jut into the  
7 alley driveway.

8           In combination with the cars already packed in the  
9 alley that belong to the residents of the Argonne Apartments,  
10 the result will create an unsafe situation where police, fire,  
11 rescue vehicles, and personal -- and personnel would be denied  
12 effective access.

13           My parents are elderly with health issues, yet they  
14 try to lead active lives. To reduce the number of stairs they  
15 climb they typically exit the house from the rear, which is at  
16 street level. Their mobility and reactions are slowed. Many  
17 commercial vehicles enter and park in reserved spaces allotted  
18 by the Argonne Apartments. Any obstruction view can endanger  
19 my parents' welfare as they walk into the common driveway. I  
20 have similar concerns for my brother who lives with my parents.  
21 He has a neurodegenerative disease which impairs his mobility.

22           In addition, the proposed increase of the driveway  
23 grade to 12 percent poses a significant safety factor to  
24 residents of both 1638 and 1636 properties alike. Currently  
25 the respective driveways for 1638 and 1636 are side by side,

1 with no physical barrier. They are at the same grade. A 12  
2 percent difference in grade between the two properties presents  
3 a tripping hazard, potentially causing serious bodily injuries  
4 as one carries groceries from the car or takes out the garbage  
5 and recyclables.

6           Moreover, the difference in grades places a practical  
7 limitation or impediment to opening car doors. This may not  
8 affect 1636, but does negatively impact my family's usage of  
9 their vehicles.

10           Property damage is another concern, no less  
11 significant. Vehicles in parking spaces reserved for apartment  
12 residents are doubly parked, one behind the other. Both  
13 Argonne and apartment residents must exercise caution when  
14 maneuvering their cars from the narrow alley driveway into  
15 their respected spaces to avoid damaging vehicles directly  
16 across. The likelihood for damage increases substantially if  
17 the number of vehicles increase and the size of vehicles exceed  
18 the size of the parking areas permitted. Moreover, 1636 is now  
19 converted to a four-unit apartment. Trash receptacles for this  
20 property would further reduce the available parking area and  
21 increase the likelihood of property damage.

22           In conclusion I'd like to emphasize that if a  
23 variance request is granted an undue and stressful burden would  
24 be placed on my family as a direct outcome. To continue  
25 contact, our neighbors at 1636 to move their vehicles when we

1 have having difficulties parking, or cannot open our car doors.  
2 And an even more serious situation, to transport family  
3 members in the event of a serious fall. Thus the impact to the  
4 public good of five people is not minimal. After the  
5 consideration of the physical and safety limitations of the  
6 space in question, and within the context of its surroundings,  
7 to argue that a request for variance would not pose any  
8 detrimental effect to the public good is ill conceived,  
9 inconsiderate, and unreasonable.

10 On behalf of my family I respectfully request that  
11 you deny the applicant's request for a parking area variance.  
12 I thank you for your time.

13 MR. HILL: Thank you, Ms. Bruno. Does the Board have  
14 any questions for the opposition?

15 MR. MAY: Yeah, I have a question. So early in your  
16 statement you stated that compact spaces don't work on this  
17 alley. Can you explain to me what you meant by that?

18 MR. GAMBRELL: Yes.

19 MR. MAY: I mean, is the alley exceptionally narrow?

20 MR. GAMBRELL: The alley is, I believe, it's 15 feet.  
21 And it's a busy alley. The alley is currently set up and has  
22 been since the homes were built in the early '20s to function  
23 with parking garages underneath the houses. So for the most  
24 part cars are out of the way.

25 As you can see from the photo, having two spaces in a

1 20-foot-wide lot with also the need to accommodate eight  
2 garbage cans and recycling bins, would create a hazard.

3 MR. MAY: Can you bring up the other image that you  
4 had of the alley with several garages?

5 MR. GAMBRELL: Sure. This one.

6 MR. MAY: Yeah. So not every house has a garage  
7 there.

8 MR. GAMBRELL: Yes. Every house had a garage. The  
9 only two homes on the block that don't are the applicant's  
10 garage and the one at the very end of the block.

11 MR. MAY: I'm sorry. Right there, the one that has  
12 the stairway coming down, where is the garage for that house?

13 MR. GAMBRELL: It's -- it has a garage. That is --  
14 you just can't see it. It has a garage.

15 MR. MAY: Where?

16 MR. GAMBRELL: Yeah, it's the one with the white.  
17 It's where the arrow is located.

18 MS. BRUNO: It's to the right of the stairs. I'm  
19 sorry.

20 MR. MAY: All right. So this -- I mean, I'm seeing  
21 this house as a single house. Is that right? So the garage is  
22 under that deck?

23 MR. GAMBRELL: It's to the --

24 MR. MAY: Or is it -- it's to the right.

25 MR. GAMBRELL: It's to the right.

1           MR. MAY: It's part of that -- it's part of that --  
2       sorry, keep my -- I might need new batteries. It's part of  
3       this property. Is that right?

4           MR. GAMBRELL: I'm sorry. Could you show me where  
5       you're pointing?

6           MR. MAY: Well, I mean --

7           MR. GAMBRELL: Yes.

8           MR. MAY: -- the line, if I'm tracing the line of the  
9       property it's like that. And then on this side it comes down  
10      there.

11          MS. BRUNO: Correct.

12          MR. MAY: Okay. So it does have a garage there.  
13      Okay. So right now it looks like some of the garages ramp down  
14      already. So there are differences in grade already.

15          MR. GAMBRELL: Yes, there are differences in grade.

16          MR. MAY: There. And what's being proposed here is  
17      to elevate it up as opposed to ramping it down.

18          MR. GAMBRELL: Correct.

19          MR. MAY: And there's no railing or anything like  
20      that to prevent somebody who is standing here -- I've really  
21      got to --

22          MR. GAMBRELL: Yeah, depending on --

23          MR. MAY: There.

24          MR. GAMBRELL: -- who has done what to the property  
25      over the years, there are retaining walls. For example, our

1 house has a retaining wall and it ramps down.

2 MR. MAY: Thank you. So there is -- I mean, there is  
3 that there and you have some hazard there. All right.

4 MR. GAMBRELL: Yeah, they ramp down to the left and  
5 as you go towards the applicant's property they level out. And  
6 as you keep going down the block they start ramping up.

7 MR. MAY: Okay. And as I understand it, I mean, not  
8 having participated in the case in September, the issue there  
9 was that when they raised up the -- when they ramped up and  
10 essentially raised the finished grade at the rear of the  
11 building to you know, up about two feet, that meant that the  
12 entirety of the ground -- of the lowest level became cellar and  
13 it was not basement anymore, right?

14 MR. GAMBRELL: Only in combination with also putting  
15 the adjacent finish grade inside the building itself, which is  
16 the notch you see on this slide. The grade where the -- at the  
17 top of the 12 percent grade against the building --

18 MR. MAY: Yeah.

19 MR. GAMBRELL: -- would not change the designation  
20 from basement to cellar. It would only be inside of the  
21 building at the bottom lip of the indentation where that would  
22 happen.

23 MR. MAY: Okay. So I'm going to ask the applicant  
24 when they have their chance to explain what happened in  
25 September because that doesn't quite make sense to me. It may

1 not be -- it may be perfectly correct, it's just, I'm not  
2 understanding what -- the way you're explaining it to me.

3 MR. GAMBRELL: It shouldn't make sense.

4 MR. MAY: Well, you know, what I'm -- you make the  
5 point that we're trying to -- you know, you think that it would  
6 be consistent for the Board to deny this relief for the parking  
7 space; be consistent with the September approval and it's -- I  
8 mean, what I'm getting out of this is that actually would be  
9 inconsistent with the previous approval. But again, I'll wait  
10 and ask the applicant to explain what happened in September so  
11 I am -- maybe I'll understand it after that.

12 I think that's it. Thank you.

13 MR. HILL: I have a question. So if this were to  
14 happen you would be in approval of this, this design, the notch  
15 that you think is supposed to be there?

16 MR. GAMBRELL: The reason for pointing out this as a  
17 potential solution is -- I mean, it's an awkward question for  
18 us because we feel like that's not our job to make approvals.  
19 It's the Zoning Administrator's job. What we are simply doing  
20 is pointing out that the developer/homeowner is going to  
21 expense to install a 12 percent grade and to create a notch  
22 under the scheme that's been approved June 23rd, 2015 --

23 MR. HILL: I'm sorry. So that's what you think was  
24 approved June 26th? I mean, June 23rd, 2015.

25 MR. GAMBRELL: This definitely was approved June

1 23rd, 2015.

2 MR. HILL: With the notch.

3 MR. GAMBRELL: That was the permit and the BZA  
4 endorsed it as a solution to the adjacent finished grade rule.  
5 But both the grade and the notch. We're just making an  
6 observation that the non-installation of the 12 percent grade  
7 and non-construction of the retaining wall are both -- appear  
8 on their face to be low to now cost issues and solutions.  
9 Whether or not that's -- we would approve it seems like it's  
10 not within our purview.

11 MR. HILL: Okay. Okay. Mr. Sullivan, do you have  
12 any questions or rebuttal?

13 MR. SULLIVAN: I do. Thank you. Mr. Gambrell, your  
14 alternative here without a retaining wall would lead to no  
15 practical difficulties you said?

16 MR. GAMBRELL: I said from the standpoint of -- yeah,  
17 from the three prong test, yes.

18 MR. SULLIVAN: Okay. But in fact this proposal as  
19 you very well know, would not then comply with the FAR  
20 requirements because that was the whole basis of your appeal.  
21 And it was the retaining wall, in fact, that the Zoning  
22 Administrator and the Board required in order to meet the 1.8  
23 FAR. Isn't that correct?

24 MR. GAMBRELL: Yes. And I would leave that to the  
25 Zoning Administrator to make that decision.



1 MR. SULLIVAN: Thank you.

2 MR. HILL: Okay.

3 MR. SULLIVAN: No further questions.

4 MR. HILL: All right. Thank you. If that's all  
5 right, I'm going to turn to OP now.

6 MR. JESICK: Thank you, Mr. Vice Chairman and Members  
7 of the Board. The Office of Planning recommends approval of  
8 the application and I'd be happy to answer any questions.  
9 Thank you.

10 MR. HILL: Board, do you have any questions for OP?  
11 No.

12 Does the opposition have any questions for OP?

13 MR. GAMBRELL: Yes. I'll try to keep them brief.  
14 Matt, were you aware that the parking pad was significantly  
15 modified under Permit 1509180, issued June 23rd, 2015,  
16 authorizing a 12 percent grade?

17 MR. JESICK: I was aware that the pad had been  
18 altered at some point to include a grade. I was not aware of  
19 the building permit number or the date.

20 MR. GAMBRELL: Okay. How would you comport that  
21 awareness with your statement that building permits were  
22 approved with the parking pad in place at the rear of the  
23 property and that, quote, construction began and was nearly  
24 completed pursuant to the approved permits with the assumption  
25 that the parking spaces at the rear of this site were

1     satisfactory, when they in fact did change?

2                 MR. JESICK: I'm not sure I understand your question.

3     But the project as a whole proceeded according to the permits  
4     that were issued in, I believe it was September of 2014. And  
5     my understanding and from seeing the project it looks like it's  
6     substantially complete. So that's where that statement came  
7     from.

8                 MR. GAMBRELL: Are you aware that parking conditions,  
9     though, have changed?

10                MR. JESICK: The slope was added to future building  
11     permits. Yes.

12                MR. GAMBRELL: Okay. You state that, quote, "Forcing  
13     a change in the design at this point after many months of  
14     construction would constitute a practical difficulty for the  
15     applicant," end quote.

16                What information did you use to substantiate this  
17     claim?

18                MR. JESICK: That is based on many, many years of  
19     standards by this Board on other variances that they have  
20     approved, and decisions by various courts that have reviewed  
21     the decisions and is in conformance with those prior decisions.  
22     So that's where our statement came from?

23                MR. GAMBRELL: So did you make use of any specific  
24     cost data?

25                MR. JESICK: No, we did not review specific cost

1 data.

2 MR. GAMBRELL: Did you make consideration of any  
3 potential design changes that could be undertaken?

4 MR. JESICK: No, we did not.

5 MR. GAMBRELL: Okay.

6 MR. JESICK: No specific design changes.

7 MR. GAMBRELL: You state that a, quote, "A visual  
8 survey of the alley showed that many properties use the space  
9 behind their buildings as a parking pad as this slot proposes  
10 to do." Did you know that parking garages are how people park  
11 on the alley at Argonne Place houses? Did your visual  
12 inspection reveal that to you?

13 MR. JESICK: I did not look into the garages, no.

14 MR. GAMBRELL: Okay. You state that, quote,  
15 "Granting relief would not impact the integrity of the  
16 regulations." How does reversing a BZA decision made just a  
17 little over three months ago not harm the Zoning Regulations  
18 and the process?

19 MR. JESICK: I don't agree with the basis if your  
20 question. I don't feel it would be reversing the Board's  
21 decision.

22 MR. GAMBRELL: You stated that the circumstances  
23 leading to this request appear to be rare. How do you comport  
24 that statement with there being clear documentation on the  
25 record with DCRA that there are three additional properties on

1 the block that have asked for exactly the same parking  
2 variance?

3 MR. JESICK: I meant that it is rare that building  
4 permits would be issued in error and that construction would  
5 proceed in conformance with those permits to such a degree.

6 MR. GAMBRELL: Yeah, I'm not sure if I understand  
7 your response to that question, in terms of my question being,  
8 you stated that the circumstances appear to be rare. However,  
9 my observation is how do you comport that statement that this  
10 would be rare based upon the fact that there are actually three  
11 additional properties looking for the same variance?

12 MR. JESICK: I still feel that it is a highly  
13 uncommon circumstance that a project would proceed this far  
14 into construction and then have its permit called into question  
15 at such a late date.

16 MR. GAMBRELL: Okay. I had no more questions. Ana,  
17 do you have any?

18 MS. BRUNO: May I ask a simple question?

19 MR. GAMBRELL: Sure.

20 MS. BRUNO: In light of the statement I made  
21 concerning the safety issue of a 12 percent grade, do you not  
22 feel that having two adjacent driveways, neighboring adjacent  
23 driveways with no barrier, and at the same grade, essentially  
24 street level, would not pose a danger to two elderly people,  
25 one 85 years old and another person who has Parkinson's disease

1   which greatly affects his ability to move. And as we're moving  
2   things out of cars and everything, how could you not see that a  
3   substantial difference in grade can actually cause someone to  
4   fall as they're moving things out of the car or crossing an  
5   area, or even with cars with door swings with low clearance  
6   cannot -- would actually hit any concrete that's raised at that  
7   upslope.

8                   You saw in the picture, I think you can actually see  
9   my parent's home in one of the slides, and --

10                  MR. MAY: I think you need to let him answer the  
11   question.

12                  MS. BRUNO: Okay.

13                  MR. JESICK: Yes. As shown in the visual evidence  
14   and by testimony today there are differences in grade between  
15   adjacent driveways. This would be a similar situation. We  
16   would support the applicants including some kind of fence that  
17   would prevent anyone from potentially walking across that  
18   change in grade and potentially tripping over it. We would not  
19   be objected to that solution.

20                  MR. HILL: Okay. Thank you. Mr. Sullivan, do you  
21   have any questions for OP?

22                  MR. SULLIVAN: No, thank you.

23                  MR. HILL: Okay. Let's see. So I see here that --  
24   so you got approval from DDOT, or has no objection, I'm sorry.  
25   And then is there anyone here from ANC 1C?

1           MR. GAMBRELL: Alan Gambrell is, but I'm not here  
2 representing ANC 1C other than to state that the ANC is on the  
3 record as supporting. Any parking variance request should be  
4 put through the Board of Zoning Adjustment.

5           MR. HILL: Okay. Is anyone here from DDOT? Is  
6 anyone here in support of the application? Anyone here in  
7 support?

8           Anyone here in opposition other than the people that  
9 are sitting here? No. Okay.

10          Mr. Sullivan, do you have any rebuttal?

11          MR. SULLIVAN: I do. I do have rebuttal. Regarding  
12 the issue of whether or not we're asking the Board to reverse  
13 their decision we're definitely not asking the Board to reverse  
14 a decision. It's not unusual for the Board to grant an appeal  
15 and then have that applicant apply for special exception or  
16 variance relief for the exact same relief because it's  
17 evaluated under different decision criteria. And we're not  
18 blaming Chairman Jordan or the Board, the facts -- it is what  
19 it is. And in fact, I mean, we could probably make the case  
20 based on the three months that went from time issuance of  
21 permit to the first stop work order as well.

22          I would like to, on the issue of the permit  
23 application itself, and on what basis DCRA granted this,  
24 there's a common in PIVs, and I can submit this, that says no  
25 additional parking required. Addition does not increase

1 intensity by more than 25 percent. That was the reviewer. She  
2 was obviously wrong about that. I think she must have been  
3 thinking the 25 percent meant gross floor area as opposed to 25  
4 percent increase in the number of units. But that is what they  
5 based their decision on. They thought there was no parking  
6 increase required.

7           Regarding the September decision of the Board, on  
8 this the Board required the applicant proposed, the Zoning  
9 Administrator approved, and then the Board affirmed that the  
10 retaining wall adjusted the grade at the back of the property  
11 and that allowed the building to comply with FAR, which was  
12 another issue that was approved initially.

13           MR. MAY: So what was that notch that you were --  
14 that the opposition was showing in their other diagram? That.  
15 Was that notch part of the plan?

16           MR. SULLIVAN: Yeah. I don't know. I don't have the  
17 plans in front of me. But the idea was that, yes, there's a  
18 retaining wall --

19           MR. MAY: Let him answer his questions to him,  
20 please.

21           MR. SULLIVAN: I believe that notch is the retaining  
22 wall and now the Zoning Administrator had certain require --  
23 had dimensional requirements for that retaining wall, and the  
24 slope of the driveway helped us do that without going too far  
25 into the building to correct that situation.

1 MR. MAY: So, I mean, the building has been finished,  
2 right?

3 MR. SULLIVAN: The building is finished, yes.

4 MR. MAY: So does it include a notch like that?

5 MR. KEATS: The notch has not been installed yet.  
6 Everything else in the building is complete except for the  
7 notch.

8 MR. MAY: And the reason you didn't complete the  
9 notch was because this case was --

10 MR. KEATS: Correct.

11 MR. MAY: -- pending. Okay. But you'll have to  
12 build a notch. How deep is that going to be and how high off  
13 the finish grade?

14 MR. KEATS: There is a formula that the Zoning  
15 Administrator offered and the height is just to the bottom of  
16 the first floor --

17 MR. MAY: Yeah.

18 MR. KEATS: -- joist. So I can't tell you exactly  
19 how many feet it is exactly.

20 MR. MAY: Right. Okay. So how deep into the  
21 building is that thing going to go?

22 MR. KEATS: It's just under three feet.

23 MR. MAY: And then there will be windows back there  
24 or something?

25 MR. KEATS: Correct.



1           MR. MAY: And what's the height of the space, this  
2 little niche?

3           MR. KEATS: It's three foot, 10, three foot, 11.

4           MR. MAY: Three, 10, three, 11 like --

5           MR. KEATS: Correct.

6           MR. MAY: Oh, I see. Okay. Got it.

7           MR. HILL: So that notch is going to be there?

8           MR. KEATS: Correct.

9           MR. MAY: It's almost enough to have the nose of the  
10 car under it.

11          MR. KEATS: Yes, sir.

12          MR. MAY: Not that this is relevant in this  
13 circumstance. So, I'm sorry, I interrupted you. You were  
14 continuing your rebuttal.

15          MR. SULLIVAN: No, that's okay. I was just going to  
16 say that that notch is required to get to the -- to keep the 16  
17 feet which the Zoning Administrator required of course.

18          Speaking of the slope, at the September decision  
19 which is not published yet, the chairman noted the problem was  
20 a violation of 2115.1, which is for the dimensions of the  
21 parking spaces. So that's the relief we're requesting. We're  
22 not requesting, nor do I believe that we need relief for the  
23 grade, for the slope. And that was a separate issue. It's  
24 already permitted.

25          Also, the fact that the grade was included or

1 changed, the dimensions didn't change. It was still 16 feet  
2 long. Nevertheless, the applicant would be happy to work with  
3 the neighbor on providing a fence or some kind of barrier,  
4 obviously for safety reasons they'd be happy to do that on the  
5 edge of the -- because we do have an extra two feet available  
6 there. We only need the 18 feet in width for the two parking  
7 spaces.

8           Regarding the unique condition of the property, I'm  
9 personally not aware that the neighbor, who happens to be my  
10 client, is applying for a parking variance for that property.  
11 But the unique condition relates to the permitting history, not  
12 to whether or not other people are requesting relief for  
13 compact spaces.

14           Finally, my last point is about, and it goes to your  
15 comment about, yes, the applicant is responsible and their  
16 architect is responsible. I would just, I would point out one  
17 of the cases that I cited in the prehearing statement regarding  
18 -- that talks about reliance and good faith reliance is the  
19 *Saah* case, S-A-A-H. And that was just a lot occupancy  
20 violation which everybody should be aware of. It wasn't that  
21 complicated. But the Board stated in that case, or the Court  
22 of Appeals stated that it can at most only be argued that  
23 petitioner or his architect should have known that the project  
24 as presented exceeded the lot occupancy. However, the same can  
25 be said for the official who approved the plans and we will not

1 go so far as to decide that any of them were negligent in  
2 failing to discover the problem at that time. So it spares  
3 the burden equally between the official and the applicant in  
4 that case.

5 Finally, I would like to ask a question of Mr. Keats.

6 If you could solve this problem and provide 19-foot-long  
7 parking spaces without any cost, or a very low cost as the  
8 opponents seem to imply, would you do that?

9 MR. KEATS: Yes.

10 MR. SULLIVAN: I don't have any -- nothing further.  
11 Thank you.

12 MR. HILL: Does the opposition have cross?

13 MR. GAMBRELL: Yes, I do. Mr. Sullivan, you stated  
14 that Chairman Joran's ruling on September 15 was regarding the  
15 16-foot lot -- I mean, the 16-foot depth of the rear yard and  
16 the parking's adequacy, and that being the reason for your  
17 coming before the Board. However, I'm trying to ask this as a  
18 question, not a statement. The record clearly shows that  
19 Chairman Jordan spoke to the definition of driveway versus  
20 parking space, and the two being quite distinct. So could you  
21 explain to me how you drew the conclusion that Chairman  
22 Jordan's statement was in reference to the depth of the yard  
23 when nothing in the record shows that to be the case?

24 MR. SULLIVAN: Sure. There's a couple reasons why.  
25 One is you will find 2115.1 as the section cited by the

1 chairman in the oral decision. Second, I am here on the advice  
2 of the Zoning Administrator that the relief we're asking for is  
3 the correct relief.

4 MR. GAMBRELL: Mr. Sullivan, Chairman Jordan's oral  
5 review of agreeing with the appellants that a driveway was  
6 distinct from a parking space made no mention of the 16-foot  
7 depth of the rear yard or the dimensions of a regulation  
8 parking spaces. So could you explain how you drew the  
9 conclusion that Chairman Jordan was referencing that the rear  
10 yard was inadequate for regulation parking spaces?

11 MR. SULLIVAN: Sure. I'll answer it again. Mr.  
12 Jordan stated 2115.1, which does relate to the dimensions and  
13 requires that the parking space dimensions shall be nine by 19.  
14 He cited that.

15 I would also add that this application is self-  
16 certified and we are not asking for relief to use a driveway as  
17 a parking space. We're not asking for relief for slope, and  
18 it's not part of the application. And in any event, it doesn't  
19 meet the definition of a driveway, which is a space that goes  
20 to a parking space, not a space that is a parking space.

21 MR. GAMBRELL: Okay. Mr. Sullivan, could you explain  
22 how good faith is demonstrated in this case in relation to  
23 zoning data, summary sheets being repeatedly filled out  
24 incorrectly to indicate there are two nine by 19 parking spaces  
25 when in fact there never were.

1           MR. SULLIVAN: Yes. I think the issue is on what did  
2 DCRA base their decision. And I believe they based their  
3 decision on the -- what the zoning comments were, that no  
4 parking was needed, and they typically, one of the primary  
5 things that they review is the plat, the surveyor's plat. And  
6 that surveyor's plat clearly showed dimensions of 16 feet in  
7 length for the parking space.

8           MR. GAMBRELL: Mr. Sullivan, do you know that there  
9 is any particular weight that's put on a zoning data summary  
10 sheet versus a plat versus a comment that's written on a PIV  
11 statement in terms of what predominates. Or is there any one  
12 particular piece of information that's more important than the  
13 other?

14          MR. SULLIVAN: No, I have no idea but if I was  
15 determining on what basis somebody gave a comment and an  
16 approval, I would go to the PIV report and see where it says  
17 zoning review approved and says, addition -- no additional  
18 parking required. Addition does not increase intensity by more  
19 than 25 percent. So I don't know what information they would  
20 have reviewed and what weight they had given. I just know what  
21 their eventual decision was.

22          MR. GAMBRELL: And last question. Given that the  
23 reference point, in terms of increasive intensity the only  
24 reference point that I can think of that would reference  
25 increase in intensity would be a zoning data summary sheet

1   which presents existing and proposed conditions. And that  
2   would be the only reference point for calculating an increase  
3   in intensity. Doesn't that suggest that the Zoning  
4   Administrator and his staff relied upon the zoning data summary  
5   sheets that were filled out incorrectly three times over the  
6   space of a year?

7               MR. SULLIVAN: No, because everything showed that the  
8   number of dwelling units was going to four units. So that's on  
9   what they base the increase in the intensity of use, and it was  
10   clearly a mistake.

11              MR. GAMBRELL: Okay. No more questions.

12              MR. HILL: If the Board doesn't have anything at this  
13   point, Mr. Sullivan, would you like to close?

14              MR. SULLIVAN: Yes, I would. Thank you. I would  
15   just like to point out that we are -- the degree of relief that  
16   we're requesting is very minor. I believe we've made a showing  
17   that it was -- the reliance that the applicant relied in good  
18   faith on the actions of DCRA in approving this permit and that  
19   they will suffer significant harm if they are forced to comply  
20   with the 19-foot-long parking space, as opposed to being  
21   granted the relief requested. Thank you.

22              MR. HILL: Okay. Does the Board have any other  
23   questions?

24              MR. MAY: Yeah, I have a couple I think. So clearly  
25   the relief is based on the assumption that it's okay to park on

1 a parking space with a 12 percent grade. I don't recall that  
2 there is a specific grade requirement in the Zoning Regulations  
3 for parking. Mr. Sullivan, do you know and is there -- if  
4 failing that is there a building code limit on grade for a  
5 parking space? I mean, certainly it doesn't meet the  
6 definition of flat, which has a certain percentage to it,  
7 right?

8 MR. SULLIVAN: Yeah, that question actually came up  
9 in the appeal hearing and the answer from the Zoning  
10 Administrator was, there is a -- there was a 12 percent limit  
11 to the slope for a driveway, but there was no such requirement  
12 one way or the other for a parking space.

13 MR. MAY: So it could be 30 percent.

14 MR. SULLIVAN: I don't know.

15 MR. MAY: If there's not a limit, I mean, I don't  
16 know.

17 MR. SULLIVAN: I can't answer that question.

18 MR. MAY: It just seems --

19 MR. SULLIVAN: Right. Yeah.

20 MR. MAY: Seems a little odd. Maybe I ought to take  
21 that up with the Zoning Commission. Maybe we did deal with  
22 that in the Zoning Reg rewrite. I don't recall.

23 And you stated, I think, that the applicant is  
24 willing to put up a fence or something like that to make sure  
25 that there's no hazard to either the occupants of this property

1 or the adjacent property resulting from that change in grade.

2 MR. SULLIVAN: Yes, of course.

3 MR. MAY: Is that correct?

4 MR. SULLIVAN: Whatever it would take to put that --

5 MR. MAY: Okay. So if we were to grant the relief it  
6 could be conditioned on that.

7 MR. SULLIVAN: Yes, we would --

8 MR. MAY: You'd accept that sort of condition.

9 MR. SULLIVAN: We have no problem with that.

10 MR. MAY: Okay.

11 MR. HILL: Any further questions? The only question  
12 I had was again about the fence, that you know, you would be  
13 willing to put up for the grade. Yeah, sure.

14 MR. KEATS: My suggestion is that the fence not be  
15 really high so that cars that are driving by can still see past  
16 the fence.

17 MR. MAY: Yeah, I mean, it could be just a 42-inch  
18 rail, you know, rail height kind of thing. Although  
19 technically you could probably put up a six or seven foot fence  
20 all the way up to the alley, but I don't think -- I agree with  
21 you, that probably wouldn't be a good thing.

22 MR. HILL: Okay. If anyone has any other questions,  
23 then I'll go ahead and close the hearing.

24 MR. GAMBRELL: Would we have a chance to make a  
25 closing statement?



1 MR. HILL: Okay. Sure.

2 MR. GAMBRELL: Sure. Okay. First off, I could speak  
3 to the grade question, and you're correct, there's some  
4 uncertainty in the Zoning Regulations about parking in terms of  
5 grade limitations. We did quite a bit of research on that and  
6 there was a reference in the Zoning Regulations to the American  
7 -- not the American Disabilities Act but a D.C. Disabilities  
8 Act, which was, as Marty Sullivan pointed out, was unfindable.  
9 However, there were references to grade limitations well below  
10 12 percent in multiple other provisions like, for example,  
11 parking structures. So I think you can certainly infer that a  
12 12 percent grade for parking would be well beyond what was  
13 acceptable in the overall Zoning Regulations.

14 Just in terms of a closing statement, I just would  
15 urge the Board to think about the extensive case law that was  
16 cited by Mr. Sullivan and that again as we said earlier, what's  
17 really crucial around that is the matter of good faith to make  
18 those cases relevant to your deliberations. And it's our  
19 contention that good faith does not exist when you fill out  
20 information and provide it to the Zoning Administrator and you  
21 do so repeatedly and inaccurately. That simply does not  
22 represent good faith.

23 If you look to *Saah* versus *D.C. Board of Zoning*  
24 *Adjustment*, and this is a non-lawyer speaking, but I had to  
25 scan through that quite fast, and saw there was a

1 miscalculation of lot occupancy in that case. In the current  
2 case there is misrepresentation. That's a big difference.

3 MR. SULLIVAN: Objection. And he's not even required  
4 -- not even permitted to give a closing statement, so --

5 MR. GAMBRELL: Okay. I'll stop then.

6 MR. HILL: Okay. All right. With that I'll close  
7 the hearing. Any further questions? Okay.

8 Is the Board ready to deliberate? Yeah, she was  
9 fine. Sorry.

10 MR. HINKLE: I'm ready to deliberate.

11 MR. MAY: Yeah.

12 MR. HILL: Okay. So I guess we're ready to  
13 deliberate. I guess I can start.

14 My thoughts are that I don't -- you know, I can  
15 understand and empathize with the neighbors and the building  
16 itself. I think that, you know, they -- the community wasn't  
17 happy with the design in the first place in terms of, you know,  
18 the size perhaps, and which led to a lot of the back and forth.  
19 I can also appreciate the developer and the costs place that  
20 he's been put in, and the length of time that has gone on for  
21 this project to finally get around to it.

22 I think that I'm satisfied in terms of meeting the  
23 standard to approve the variance, and also with the fact that  
24 there is, you know, the safety concerns of the neighbors with  
25 the grade and the fence that would be put up. But yeah, those

1 are my thoughts.

2 MR. MAY: Mr. Vice Chair. There's no doubt in my  
3 mind that there were problems with this project from the  
4 beginning and I won't go into, you know, whether anything was  
5 deliberate or accidental, whether these are, you know,  
6 unintentional mistakes or mistakes nonetheless, and there were  
7 problems with the project from the beginning. And I'm not  
8 particularly pleased that the Board previously ruled that that  
9 circumstance is sufficient to allow consideration of the lowest  
10 level completely as a seller. But I'm not going to try to  
11 reverse it in this circumstance.

12 Nonetheless the relief that's being requested here is  
13 the ability to consider these two parking spaces as essentially  
14 equivalent to compact spaces, and I don't really have a problem  
15 with that. I think this is a really a relatively minimal level  
16 of relief. Like I said, I don't like the project over all but,  
17 you know, just based on the regulations and how we're supposed  
18 to proceed in variances cases, I think the test has been met  
19 and the relief is minimal and so I'd be inclined to support it.  
20 That's it.

21 MR. HINKLE: Yeah, I sat in the appeal and you know,  
22 sitting here now it's been a struggle, this project. And I'm  
23 still struggling with the idea that you could submit plans that  
24 don't meet the requirements for parking. And I have a real  
25 issue with that. And then to come back, you know, months or a

1 year later to ask for relief it's difficult for me.

2 But you know, I understand there were issues and  
3 mistakes made, you know, perhaps at DCRA. You know, I'm a bit  
4 on the fence. I was thinking about, you know, is there  
5 substantial detriment to the public good and I think we have  
6 seen and we have approved in some cases, compact spaces along  
7 alleys and I think in this case I could go along and support  
8 the application. I don't feel good about it but I think I'm  
9 there.

10 MR. MAY: Yeah, if I could add something. You know,  
11 my willingness to support the relief in this circumstance is  
12 that it is not really based on whether, you know, the applicant  
13 was wronged by DCRA with the approvals or anything else. I  
14 mean, clearly the applicant in the -- you know, from the  
15 beginning was -- you know, there were mistakes made either  
16 directly by the applicant or by the applicant's agents, the  
17 architects or whoever.

18 But it really boils down to it, you know, if we were  
19 considering this case just cold, you know given the -- you know  
20 the place for the building and given the fact that there's  
21 sufficient space to provide the equivalent of two compact  
22 parking spaces, would we grant the relief. And yeah, I think  
23 we would so that's why I'm comfortable moving ahead. And I  
24 really am not thinking about, you know, the whole approval  
25 process and whether anybody -- you know, who did what, right or

1 wrong, in that process, the applicant or DCRA. It's kind of  
2 hard to really figure things out on that basis and make  
3 decisions on that basis, so.

4 MR. HINKLE: No, and that's understood.

5 MR. MAY: Yeah. But I'm with -- you know, I agree  
6 with you. I have mixed feelings about it but I'm willing to  
7 support.

8 MR. HINKLE: Yeah. And the issue is what's the  
9 alternative here. And I'm not quite sure there's a good  
10 alternative. So I'm willing to support this.

11 MR. HILL: Okay. With that I'll make a motion that  
12 we approve Application 19154, pursuant to 11 DCMR 3103.2 for a  
13 variance from the minimum parking dimensions required under  
14 2115.1 to convert an existing flat into a four-unit apartment  
15 house in the R-5-B district. The premises, 1636 Argonne Place.

16 MR. MAY: I'll second it.

17 MR. HILL: It's been made and seconded.

18 [Vote taken.]

19 MR. HILL: Motion carries.

20 MR. MOY: Staff would record the vote as three to  
21 zero to two. This is on the motion of Vice Chair Hill to  
22 approve the application for the relief requested. Seconding  
23 the motion is Mr. Peter May. Also in support Mr. Jeffrey  
24 Hinkle. We have a board member not present, not voting, and a  
25 board seat vacant. The motion carries. This is a full order,

1 sir.

2 MR. HILL: Okay. Thank you very much. Mr. Moy, do  
3 we have anything else today?

4 MR. MOY: Finally, no, sir. This is it from the  
5 staff.

6 MR. HILL: Okay. Well, then we're adjourned.

7 [Whereupon, at 3:09 p.m., the hearing was adjourned.]

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